

APPENDIX E

Conservation Easements

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 2004, by and between KIN-BUC, INC. having an address at c/o Transtech Industries, Inc., 200 Centennial Avenue, Piscataway, NJ 08854 (hereinafter referred to, together with its assignees, as "Grantor") and the CLEAN LAND FUND, a tax exempt, not-for-profit organization formed pursuant to 26 U.S.C. §501(c)(3), incorporated in Rhode Island, having an address at 815 Beacon Hill Road, P.O. Box 725, Block Island, RI 02087, held in trust for the benefit of its assignee and for the purposes set forth herein (hereinafter referred to, together with its assignees, as "Grantee").

RECITALS

WHEREAS:

- A. Grantor is an owner in fee of certain lands (the "Property") designated on the Township of Edison Tax Map as Block 400, Lots 3-C in the Township of Edison, County of Middlesex, State of New Jersey.
- B. Grantee intends to accept this Easement as "grantee" in trust for a temporary period until such time as Grantee assigns this Easement to an organization, approved by the EPA, with the primary purposes of promoting and securing the protection, preservation and enhancement of ecologically significant lands, open spaces, natural resources, farmlands and areas of scenic and historical importance, and which organization has the resources to enforce the restrictions herein set forth.
- C. The Property is predominantly used for open space. The physical features, vegetation, and other characteristics of the Property have been or will be catalogued in the Baseline Documentation (defined in Paragraph 9, below) compiled in connection with the transfer of this Easement.
- D. The Property possesses significant natural, scenic, aesthetic, open-space, plant and wildlife habitat, watershed, wetland, forest, resource conservation and similar features and conservation values that are of great importance to Grantor, Grantee, and the people of the State of New Jersey and the United States, the preservation and protection of which will yield a significant public benefit.
- E. The Legislature of the State of New Jersey has declared that the retention of land for open space purposes is important to the present and future economy of the State and the welfare of the citizens of the State.
- F. Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

G. Grantor desires to reserve the right to conduct those activities expressly reserved to Grantor in this Easement.

H. For all of the purposes and subject to all the terms and conditions herein set forth, Grantor desires to give and grant to Grantee in trust and Grantee desires to accept as trustee for the benefit of its assignee the conservation easement hereinafter described.

GRANT OF PERPETUAL EASEMENT

NOW, THEREFORE, in consideration of the foregoing, the sum of _____ (\$ _____) Dollars, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the state of New Jersey, including the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1, et seq., Grantor does hereby grant, bargain, transfer and convey unto Grantee, as trustee for the benefit of its assignee, an easement and interest in perpetuity (the "Easement") on, over and upon the Property, said Property being in the Township of Edison, County of Middlesex, State of New Jersey, of the nature and character, to the extent, and on the terms hereinafter set forth, with which the Grantor and Grantee in their respective capacities for themselves and their respective heirs, administrators, executors, successors and assigns, agree to comply and Grantee by its acceptance of this grant of Easement undertakes to enforce until such time as Grantee assigns this Easement.

1. DECLARATION OF COVENANTS, RESTRICTIONS AND OTHER TERMS

1.1. Definitions. The following terms shall have the following meanings when used herein, unless the context clearly requires otherwise. Terms defined in the singular shall have a correlative meaning when used in the plural and vice versa, and other inflected forms of such defined terms shall likewise have correlative meanings. Unless otherwise expressly provided for herein, capitalized terms used in this Easement shall have the same meaning assigned to them in the CLF Contract and the Federal Consent Decree.

The term "building" means any structure or portion thereof or addition thereto having a roof supported by such things as columns, posts, piers, walls or air and intended for the shelter, business, housing or enclosing of persons, animals or property, but excluding temporary structures (such as tents and portable sanitary facilities) installed for and during special occasions or events and removed immediately thereafter.

The term "CLF Contract" means that certain contract by and between Transtech Industries, Inc., Filcrest Realty, Inc., Kin-Buc, Inc., Inmar Associates, Inc. and the Clean Land Fund which is dated December 30, 2004, and a copy of which is attached as Appendix "F" to the Federal Consent Decree.

The term "Conservation Values" means all those natural, scenic, aesthetic, open space, ecological, plant and wildlife habitat, soil and water resource quality, watershed, floodplain, wetland, and similar features and values that characterize or are associated with the Property. Specific conservation values of the Property are documented in the Baseline Documentation to be kept on file at the offices of the Grantee, and which is incorporated herein by reference.

The term “construct” means to construct, build, install, place, erect, alter, enlarge, manufacture, assemble, or fabricate by any means or method.

The term “Easement” means this Conservation Easement.

The term “Environmental Law” means any federal, state and local law, statute, rule, order, regulation, ordinance, code, requirement or ruling now or hereafter in effect, imposed by any governmental authority regulating, relating to, or imposing liability or standards of conduct relating to pollution or protection of the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), public health and safety or employee health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

The term “Existing Facilities” means structures that are located on, above or under the Property as of the date of this Easement.

The term “Federal Consent Decree” means that certain consent decree entered into by the plaintiff United States and the defendants in the action styled “United States and New Jersey Department of Environmental Protection v. Chemical Waste Management, Inc. et al., C.A. No. 02-2077 (USDC, DNJ).”

The term “Hazardous Material” means each and every material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, Hazardous Material, hazardous substance or contaminant under any Environmental Law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any Environmental Law.

The term “maintain” means to keep in good condition, appearance and repair, and to renovate without any increase in exterior dimensions.

The term “NJDEP” means the New Jersey Department of Environmental Protection. The term “NRD Lots” means those certain lots numbered 3-C, 37, 43, 44, 45, 46, 47, 56, 60, and 61 in Block 400, Township of Edison, Middlesex County, New Jersey, which are some of the lots on which the WMI Group will perform the NRD Project.

The term “NRD Project” means those certain activities that the WMI Group is required to perform under the State Consent Decree.

The term “Passive Recreational Uses” shall mean low-impact outdoor recreational pursuits that do not involve the use, placement, construction or installation of any structure or items of fixed or semi-fixed equipment, or result in any alteration of the land, other than those trail related structures and surface alterations expressly permitted in Para. 6.2 below. By way of example, and without limiting the generality of the foregoing, Passive Recreational Uses shall not include such things as playing fields, playgrounds, racquet courts, golf courses, skating rinks, tracks, sports stadiums, downhill ski runs and lifts, water parks, shooting ranges, and similar installations.

The term "State Consent Decree" means that certain consent decree entered into by the plaintiff New Jersey Department of Environmental Protection and the defendants in the action styled "United States and New Jersey Department of Environmental Protection et al. v. Chemical Waste Management, Inc., et al., C.A.No. 02-4610(USDC, DNJ).

The term "structure" means any combination of materials to form a construction or fabrication for temporary or permanent occupancy, use or ornamentation, whether constructed on, above or below the surface of the land comprising the Property, including, but not limited to: (i) houses, cabins, mobile homes, trailers, barns, stables, sheds, silos, greenhouses, outhouses, cabanas, and other buildings and similar items of every kind and description, (ii) swimming pools, fences, docks, bridges, decks, satellite dishes and antennae, cellular telephone and other towers, billboards, signs, storage tanks and other accessory structures and fixed items of equipment; (iii) water, sewer, power, fuel and communication lines, other utility systems and related facilities; (iv) culverts, detention basins, and other stormwater or groundwater storage and control facilities; and (v) pads, patios, playing courts, riding rings, paddocks, corrals, pens, walkways, roads, driveways, parking areas and other areas constructed of or surfaced with wood, concrete, macadam, brick, paving stones, cinder block, gravel, clay, stone dust or other impervious or semi-pervious material.

The term "UAO Lots" means those certain lots numbered 3-C, 49, 59 and 70 in Block 400, Township of Edison, Middlesex County, New Jersey, among others, on which certain work is required under the UAOs.

The term "UAOs" means those certain EPA, Region 2, unilateral administrative orders, numbered II-CERCLA-30102, II-CERCLA-60105, II-CERCLA-00114 and II-CERCLA- 93-0101, issued to Grantor and certain members of the WMI Group, among others, and requiring the performance of certain activities on Lots 3-C, 49, 59 and 70 on the Property, among other lots.

The term "EPA" means the United States Environmental Protection Agency.

The term "United States" means the United States of America, including its departments, agencies and instrumentalities.

The term "WMI Group" means Waste Management, Inc. Waste Management Holdings, Inc., Chemical Waste Management, Inc., SCA Services, Inc. n/k/a/ SC Holdings, Inc., SCA Services of Passaic, Inc., Earthline Company, Wastequid, Inc., and Anthony Gaess.

The terms "wetlands" and "wetland areas" mean wetlands as defined by the January 1989 edition of the Federal Manual For Identifying and Delineating Jurisdictional Wetlands, or such other criteria for identifying and delineating wetland areas as may from time to time be promulgated by an appropriate state or federal governmental agency, provided that such other criteria have been adopted by Grantee for purposes of this Easement by resolution of its governing board.

2. TERM, FUTURE INSTRUMENTS, NOTICE OF TRANSFER, RELATIONSHIP TO PRIOR EASEMENTS AND CONSENT DECREES.

2.1 Perpetual Term. This Easement shall be perpetual and run with the land and shall be binding upon all future owners of any interest in the Property, thus creating open space, easements and restrictions in perpetuity.

2.2 Reference to Easement in Future Instruments & Notice of Transfer. This Easement shall be recorded in the Office of the Clerk of Middlesex County and a reference to the Easement shall be contained in any future deed, lease or document of transfer or conveyance affecting the Property. Grantor shall give written notice to the Grantee and the WMI Group of any such transfer or conveyance of any interest in the Property within ten (10) days following the date of such transfer or conveyance, which shall include the name and address of the Grantee of such interest. Grantor shall provide a copy of this Easement to all subsequent grantees of the fee simple interest in any part or all of the Property. The failure of the Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

3.1 Purposes. The purposes of this Easement include, but are not limited to, the following: (a) that the lands subject to this Easement be protected in their natural, scenic, open and existing state in perpetuity, subject only to the specific rights expressly reserved to the Grantor herein, (b) that the natural features of the Property and the Conservation Values associated with the Property be respected and preserved to the maximum extent consistent with Grantor's exercise of the rights expressly reserved to Grantor by the terms of this Easement; that the Natural Area be forever protected and preserved in its natural, scenic and existing state free from all activities that might damage, compromise or interfere with its ecological diversity, natural beauty or resource quality, or with the natural processes occurring therein; and that future uses of the Property be confined to such activities as are not inconsistent with the said purposes or with the terms and conditions of this Easement.

3.2 (A) Grantor and Grantee agree and acknowledge that the USEPA issued the UAOs, annexed hereto as Exhibit A and made a part hereof, to Grantor and certain members of the WMI Group, among other parties, which require the recipients of those UAOs to perform certain remedial activities on several lots in the Property, including the UAO Lots. This Conservation Easement is also subject to the UAOs and will be construed and implemented so as to allow the Grantor and those certain members of the WMI Group to complete the activities required of them by the UAOs. Grantor and Grantee also agree and acknowledge that the Grantor and the WMI Group, among other parties, have entered into the State Consent Decree, annexed hereto as Exhibit B and made a part hereof, which requires the WMI Group to perform certain restoration activities on several lots including, but not limited to, the NRD Lots. This Conservation Easement is also subject to the State Consent Decree and will be construed and implemented so as to allow the WMI Group to complete the activities required of them by the State Consent Decree. Grantor and Grantee also agree and acknowledge that the Grantor and the WMI Group, among other parties, have entered into the Federal Consent Decree, annexed hereto as Exhibit C and made a part hereof, which requires the Grantor and the WMI Group to perform certain activities on the Property. This Conservation Easement is also subject to the Federal Consent Decree and will be construed and implemented so as to allow Grantor and the WMI Group to complete activities required of it under the Federal Consent Decree.

(b) In the event of a conflict between this Easement and the Federal Consent Decree, the Federal Consent Decree shall control. In the event of a conflict between this Easement and the State Consent Decree, the State Consent Decree shall control. In the event of a conflict between this Easement and the UAOs, the UAOs shall control.

4. Rights of Grantee. To accomplish the purposes of this Easement, the following rights are hereby conferred upon Grantee and its employees, agents and representatives in trust for the benefit of its assignee:

(a) to have access to and enter upon the Property for the purpose of inspecting the Property, including, if necessary, the right to enter upon and cross over other lands owned by Grantor, or over which Grantor has a right of ingress and egress, to:

(i) monitor compliance with and otherwise enforce the terms of this Easement;

(ii) conduct scientific research and biological inventories;;

(c) preserve and protect the Conservation Values and the natural features of the Property (subject to Grantor's reserved rights hereunder), and in connection therewith, to determine the consistency of any activity or use for which no express provision is made herein with the purposes of this Easement and the Conservation Values;

provided, however, that, except in cases in which Grantee determines that immediate entry is required to prevent, terminate or mitigate any violation of this Easement, such entry shall be upon prior reasonable notice to Grantor and, with respect to the NRD Lots and the UAO Lots, to the WMI Group; and further provided, however, that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

(b) to prevent Grantor or any third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on or use of the Property that is inconsistent with the purposes, terms and conditions of this Easement; to enforce this Easement in the case of any breach or violation by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by means of any remedy provided for herein or otherwise available at law or in equity; to require of Grantor or third persons the restoration of such areas or features of the Property as may be damaged by any inconsistent activity or use, and, if Grantor shall fail to do so and if Grantee shall so elect, to carry out reasonable and appropriate restoration activities on the Property following a violation of this Easement, and

(c) subject to the prior approval of Grantor, as to their size, design and location, which approval shall not be unreasonably withheld, to erect signs identifying Grantee as the holder of this Easement.

5. Prohibited Uses and Activities. Activities on and uses of the Property that are inconsistent with the purposes of this Easement are prohibited. Without limiting the generality of the foregoing, from and after the date of this Easement the following activities and uses are expressly forbidden on, over, or under the Property, except as provided in Paragraph 6 and except

as necessary to implement the Federal Consent Decree, and the State Consent Decree, and to comply with the UAOs:

(a) construction, building, installation, placement, erection, assembly, manufacture, fabrication, alteration, enlargement, maintenance, repair, renovation or replacement of any structure or structures (as defined herein) on, above or beneath the surface of the Property, unless expressly authorized by this Easement;

(b) commercial or industrial uses of the Property;

(c) processing, storage, disposal, spreading, placing or dumping of refuse, rubbish, debris, garbage, ashes, sawdust, bark, trash, dredge spoil, chemicals, Hazardous Materials, animal waste, fertilizers, abandoned vehicles, appliances, or machinery, or of any other substance or material that has the potential to cause significant harm or damage to plants, wildlife, the scenic quality of the Property or other Conservation Values;

(d) excavation or removal of materials, including, but not limited to, dredging, mining, slant mining, drilling, quarrying or other extraction of loam, peat, turf, soil, gravel, sand, coal, rock, minerals, petroleum, or natural gas, or other natural resource from the Property;

(e) disturbance or alteration of the surface topography or natural features of the Property, except if: (i) the disturbance or surface alteration is reasonably necessary in order to carry out an activity that is expressly permitted by this Easement, (ii) the circumstances are such that no feasible alternatives are available that would avoid the need for such disturbance or alteration, and (iii) appropriate measures are taken to minimize and mitigate any adverse impacts on the Property or the Conservation Values;

(f) draining, dredging, filling, diking, or other disturbance of Wetland Areas;

(g) alteration, or manipulation of the course, flow, size other characteristics of any streams, rivers, lakes or other water bodies (other than artificially-created farm ponds) located on the Property;

(h) cutting, destruction or removal of trees, limbs, shrubs, native plants, leaf litter, detritus, or other plant material, vegetation or naturally occurring substance (collectively, "vegetation"), whether alive, standing-dead, or fallen, and regardless of its characteristics, except: (i) control of non-native vegetation through responsible application of herbicides and/or biological control measures; and (ii) trimming or removal of dead, fallen, diseased or infected trees, tree limbs and other vegetation that pose a health or safety hazard or that obstruct passage on paths, trails, roads or drives lawfully existing on the Property;

(i) planting, cultivation or propagation of any invasive or non-native species;

(j) use of chemical or biological pesticides, herbicides, fungicides, rodenticides, or other biocides on the Property except in a responsible manner to control one or more species generally acknowledged to be a pest or invasive species, and provided that: (i) all applicable Environmental Laws, governmental policies and recommendations concerning the proper use and

application of the substance in question are complied with, and (ii) the substance in question does not pose any significant risk of harm to any threatened or endangered species or rare community types as identified by the New Jersey Natural Heritage Database or similar compendium;

(k) use of trucks, all-terrain vehicles, trail bikes and other motorized off-road vehicles except: (i) vehicles, machinery and equipment used for maintenance and cultivation of lawns and gardens in the open areas; and (ii) use of vehicles for emergency purposes and to carry out required management actions on the Property;

(l) except as expressly permitted herein, the conduct of any other activities on or uses of the Property that are likely to have a significant and demonstrable adverse impact on drainage, flood control, water conservation, soil conservation and erosion control, plant and wildlife habitat or any of the Conservation Values;

(m) partition, division or subdivision, legal or de facto, of the Property, or any portion thereof, into more than one ownership, including along any existing interior lot lines; provided, however, that Grantee may, in Grantee's reasonable discretion, grant approval for a subdivision or boundary line adjustment as long as the same would not compromise any of the conservation purposes of this Easement or result in increased development on the Property or on any adjoining lands, and that the deed transferring any subdivided parcel conspicuously discloses the existence of this Easement; and

(n) Notwithstanding anything set forth in this Paragraph 5, no Passive Recreational Uses or other active or passive uses of any kind or nature whatsoever are to be permitted, or are to occur, on Lot 3-C, Block 400, during the period in which the UAOs are in effect, without the express prior written approval of USEPA and NJDEP, notice of which approval shall be provided to the WMI Group.

6.1 Acts and Uses Not Otherwise Prohibited. Grantor reserves all rights inherent in the ownership of the Property that are not prohibited by, or inconsistent with, the terms and purposes of, this Easement.

6.2 Passive Recreational Use.

Except as prohibited herein, Grantor may use and allow the Property to be used for Passive Recreational Uses (as defined in Para. 1.1), such as: nature study and observation, hiking, picnicking, sledding, cross-country skiing, and bicycling. Recreational activities other than Passive Recreational Uses shall not be permitted. The scope and frequency of, number of participants in, and manner of carrying out such Passive Recreational Uses shall be limited as necessary to ensure that they do not result in significant and demonstrable damage to, or degradation of, the Property or the Conservation Values. In connection with, and to enhance and support, the foregoing permitted Passive Recreational Uses, Grantor may maintain existing trails and, with prior notice to and approval of Grantee, which approval shall not be unreasonably withheld, clear and maintain additional trails, provided that no trail shall be improved with macadam, gravel, paving stones or other impervious or semi-pervious material. Grantor may also (i) construct and maintain minor rustic boundary markers, trail markers, trail-related improvements, reasonably necessary to their safe enjoyment, or the control of runoff and trail-related damage such as steps, bog bridges, erosion bars and railings, small unlighted informational and interpretive signs, registration boxes, and wildlife observation blinds, provided that they shall be constructed of rustic natural colored materials that blend in with the natural surroundings and complement the natural and scenic features of the landscape; and (ii) install barriers and low fences where necessary to prevent use or access by motor vehicles or to protect fragile natural resources.

6.3 Soil and Water Conservation. Grantor may engage in such soil and water conservation practices or habitat restoration projects as may be necessary or appropriate, provided that such activities further the goals intended to be achieved by this Easement and protect the Conservation Values.

6.4 Signs. Grantor reserves the right to install signs stating the name and address of the Property and the names of persons living on the Property, advertising the Property for sale or rent, posting the Property to control unauthorized entry or use, and advertising or regulating on-site activities expressly permitted by the terms of this Easement; provided, however, that: (a) no sign shall exceed sixteen (16) square feet in area, and (b) Grantor shall not design or locate such signs in such a way as to significantly diminish the scenic character of the Property.

7. Intentionally Omitted .

8. Transfer and Extinguishment of Development Rights. Except as specifically reserved to Grantor in this Easement, and subject to the terms and conditions of this Easement, the State Consent Decree, the Federal Consent Decree, the UAOs and Environmental Law, Grantor hereby grants to Grantee, in trust for the benefit of its assignee, (a) all rights to construct, install, erect, or enlarge structures upon, develop or in any other manner improve or alter the Property in a manner that would violate the terms, or be inconsistent with the purposes, of this Easement, and (b) all development credits and all transferable, cluster or other development rights, howsoever designated, that are or may hereafter be allocated to, associated with, implied, reserved, or inherent in the Property. Grantor and Grantee agree that such rights are terminated and extinguished, and may not be used on any portion of the Property, transferred to any other property, or used for the purpose of calculating permissible size, height, bulk or number of

structures, development density, lot yield or any similar development variable pertaining to the Property or any other property. All of Grantor's right, title and interest in and to any such rights that may hereafter be created shall automatically be vested in Grantee and extinguished immediately upon their becoming legally effective. Grantor hereby appoints Grantee as Grantor's attorney-in-fact for, and only for, the limited purpose of executing and recording such further instruments as may be necessary or appropriate to effectuate the extinguishment of such rights. Grantor acknowledges that the power of attorney herein granted is coupled with an interest in the subject matter and is irrevocable. If Grantee shall have occasion to exercise the power of attorney herein granted, Grantee shall notify Grantor within a reasonable time following such exercise specifying the action taken and shall provide to Grantor copies of all instruments evidencing such action.

9. Baseline Documentation. In order to establish the uses and condition of the Property as of the date of this Easement so as to be able to properly monitor its future uses and condition and assure compliance with the terms hereof, Grantor will make available to Grantee all existing maps, photographs, surveys, plans, reports, studies and other documentation in Grantor's possession that describe or depict the current uses and condition of the Property. In addition, Grantee shall have the right to prepare such additional documentation, such as surveys, maps, drawings, photographs, on-site delineations, plant and wildlife inventories, and soil, water and air quality tests, as it deems appropriate. Grantee, its agents, employees, and consultants, shall have the right to enter upon the Property at reasonable times and by prior appointment for this purpose. The aforementioned documentation shall constitute an inventory of the Property's relevant features and conditions (the "Baseline Documentation"). The Baseline Documentation shall be kept on file at Grantee's offices and shall be accessible to Grantor upon reasonable notice during normal business hours. The parties agree that if a controversy arises about the condition or uses of the Property as of the date of this Easement, the parties may use other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy. Grantor and Grantee shall each provide to the other, without charge, a copy of all additional documentation concerning the Property prepared by or for Grantor or Grantee, from time to time. The Baseline Documentation shall include a map and description of all the installations maintained under the UAOs, together with a description of the activities that the recipients of the UAOs must undertake under the UAOs, and a map and description of the NRD Project, together with a description of the activities that the WMI Group must undertake to complete the NRD Project.

10. REMEDIES AND ENFORCEMENT

10.1 Notice of Violation and Opportunity to Cure. If Grantee determines that a violation of this Easement by Grantor has occurred, is occurring, or is threatened, Grantee shall give a written notice thereof (a "Notice of Violation") to Grantor, EPA and the WMI Group, summarizing the facts in Grantee's possession concerning the nature of the violation. Upon receipt of a Notice of Violation, Grantor shall immediately (a) cease those actions that have given rise to the alleged violation, and (b) take such actions as may be necessary to prevent any further harm or damage to the Property or the Conservation Values. Within sixty (60) days after the date of the Notice of Violation, Grantor shall cure those violations by Grantor of this Easement and restore the Property to the condition that would have existed had there been no violation, provided, however, that if the violation is such that it cannot reasonably be cured within such sixty

(60) day period, Grantor shall commence to cure such violation within the sixty (60) day period and shall thereafter diligently pursue the same to completion, and the period for cure shall be extended for such time as is reasonably necessary in order to permit the actions required to effect such cure to be diligently completed. If Grantee, in its sole judgment, believes that circumstances are such that immediate action is required to prevent or mitigate significant harm or damage to the Property or the Conservation Values, Grantee may pursue its remedies without waiting for any period provided for cure to expire, and without prior notice to Grantor (except as may be required by law).

10.2 Remedies. Subject to the notice and opportunity to cure provisions set forth above, Grantee shall be entitled to preliminary restraints, and to injunctive and other equitable relief to prevent threatened or continuing violations of this Easement, and to otherwise enforce the terms of this Easement and including, without limitation, relief requiring Grantor to remove offending structures and otherwise restore the Property to the condition that would have existed had there been no violation of this Easement. Grantor agrees that Grantee's remedies at law for violation of this Easement will be inadequate and that Grantee shall be entitled to the injunctive relief described herein, and to specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee shall also be entitled to recover damages for violation of this Easement, including, but not limited to: (a) damages for harm to, and degradation, impairment, disturbance and loss of, natural or scenic features of the Property and the Conservation Values associated with the Property; (b) all costs necessary to restore the Property to the condition that would have existed had there been no violation of this Easement; and (c) the value of minerals, soil, sand, timber, or other natural resources sold or removed from the Property in violation of this Easement. The remedies described herein shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

10.3 Costs of Enforcement. Grantor shall bear all reasonable costs incurred by Grantee if Grantee prevails in any proceeding commenced by Grantee to enforce this Easement including, but not limited to, court costs, reasonable attorneys' fees and fees of expert witnesses, and all costs of restoration necessitated by the violation.

10.4 Forbearance. Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver; nor shall Grantor be entitled to assert any defense based upon laches, estoppel or prescription with respect to any violation of this Easement as to which Grantee was not specifically notified by Grantor in writing.

10.5 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant harm or damage to the Property resulting from such causes.

10.6 Restoration Plans. If restoration work is required as a result of a violation, Grantor shall submit a detailed restoration plan to Grantee for its approval prior to undertaking restoration activities on the Property. All restoration shall be carried out in accordance with property restoration guidelines and standards adopted by Grantee from time to time.

11. INDEMNIFICATION

11.1 By Grantor. Grantor hereby release and agree to hold harmless, indemnify and defend Grantee and its members, trustees, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, claims, demands, orders, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or wrongful acts of any of the Indemnified Parties, (b) the obligations specified in this Article, (c) the representations and warranties contained in Paragraph 14.1, and (d) the presence or release upon or about the Property of any Hazardous Material or the violation or alleged violation of any Environmental Law unless caused by any of the Indemnified Parties.

11.2 By Grantee. Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor and its employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, claims, demands, orders, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property (other than damage necessarily associated with restoration activities), resulting from any act or omission of Grantee or its members, trustees, officers, employees, agents, and contractors while on the Property in connection with the exercise of any monitoring, enforcement or other rights conferred upon Grantee by this Easement.

12. ASSIGNMENT

12.1 Right to Assign. Grantee intends to transfer and assign, and any future assignee of this Easement, may at any time, upon thirty (30) days' notice to Grantor, EPA and the WMI Group, transfer and assign, this Easement and the rights and obligations created hereby, in whole or in part, to one or more EPA-approved Conservation Organizations or governmental entities pursuant to the Federal Consent Decree; provided, however, that the assignee shall simultaneously with such assignment assume the obligation to carry out the conservation purposes for which this Easement is granted. A copy of such assignment shall be provided to EPA and the WMI Group within ten (10) days of the effective date of such assignment.

12.2 Executory Limitation. If Grantee shall cease to function as a non-profit corporation with one of its primary purposes being the preservation of natural resources and open space (other than as the result of a merger into or consolidation with any other non-profit corporation with similar purposes), or shall be liquidated or dissolved, upon the occurrence of such event, Grantee shall assign all of its rights and interest in the Property and delegate all of its responsibilities under

this Easement to one or more EPA-approved Conservation Organizations or governmental entities.

12.3 Release of Grantee's Further Obligations. The holder of this Easement immediately before any such assignment or judicial re-vesting shall thereafter have no further obligation to monitor compliance with, or enforce the provisions of, this Easement; provided that the assignee meets the requirements set forth above and has assumed the obligation to monitor, abide by the terms of and enforce this Easement.

13. CONDEMNATION; TERMINATION

13.1 Condemnation Proceedings. Should all or part of the Easement Property be taken in exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, by any public, corporate, or other authority so as to terminate, abrogate or limit the restrictions created by this Easement, in whole or in part, Grantor and Grantee shall join in appropriate actions to challenge such taking. In the event Grantor and Grantee are unable to prevent a taking notwithstanding their reasonable and appropriate efforts to the contrary, Grantor and Grantee shall join in appropriate actions to recover the full value of the interests in the Easement Property subject to the taking or in lieu purchase, and all direct and incidental damages, costs and fees occasioned thereby. All expenses incurred jointly by Grantor and Grantee in connection with such actions shall be borne by them in the same proportion set forth below with respect to the sharing of the proceeds of a condemnation award, sale, lease, exchange or other disposition of the Property.

13.2 Judicial and Statutory Termination Proceedings. This Easement is intended to be of perpetual duration and therefore may not be terminated by mutual agreement of the Grantor and the Grantee. However, in the event an unexpected change in circumstances arises in the future that makes it impossible to accomplish the purposes of this Easement, this Easement may be extinguished in whole or in part through an appropriate judicial proceeding (and only through a judicial proceeding). In such event the Grantor shall also satisfy all other applicable legal requirements, including those set forth in the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1, et seq., as amended (or any successor provision). Grantor and Grantee acknowledge the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, that neighboring properties may in the future be put entirely to such prohibited uses, and that Grantor may not be able in the future to conduct or implement any or all of the uses permitted under the terms of this Easement. However, such circumstances shall not be deemed to justify the termination or extinguishment of this Easement.

13.3 Division of Proceeds; Valuation of Easement. Grantee shall be entitled to receive, from the net proceeds of a condemnation award or of a sale, lease, exchange or other disposition of all or any portion of the Property following termination or extinguishment of this Easement, an amount equal to the stipulated fair market value of the Easement, or proportionate part thereof, determined as provided herein. This Easement constitutes a real property interest which the parties stipulate to have a fair market value determined by multiplying (a) the fair market value of

the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable solely to permitted improvements by Grantor), by (b) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

14. REPRESENTATIONS AND WARRANTIES

14.1 By Property Owners. Grantor represents and warrant to Grantee that, to the best of its knowledge and belief: (i) it owns the Property in fee simple, free and clear of all liens and mortgage interests that have not been legally subordinated to this Easement, the State Consent Decree, the Federal Consent Decree and the UAOs identified in paragraph 3.2 above; (ii) it has sole possession of the Property, has not entered into any contract to sell or lease the Property to someone else, and has not given anyone else any right of refusal, option or other rights concerning the purchase or lease of the Property; (iii) no person or entity possesses the right to remove any vegetation, mineral or other material from the Property, or carry out any other activity which is inconsistent with the purposes and terms of this Easement; (iv) the Property complies with all federal, state and local laws, regulations and requirements applicable to the Property and its use; (v) there is no litigation or other judicial, quasi-judicial or administrative proceeding pending or threatened that in any way affects or relates to the Property; (vi) there are no judgments, liens or other legal obligations that may be enforced against the Property; (vii) there are no underground storage tanks on the Property; and (viii) no civil or criminal proceedings or investigations have been instigated, and no notices, claims, demands or orders have been received, arising out of any violation or alleged violation of any federal, state or local law, regulation or requirement applicable to the Property or its use; except as set forth in this Easement.

14.2 By Grantee. Grantee represents and warrants to Grantor that: (i) it is a charitable nonprofit corporation exempt from income tax under section 501(c)(3) of the Code; (ii) it is a "qualified organization" within the meaning of section 170(h) of the Code; (iii) it is a "charitable conservancy" as defined in the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1, et seq.; and (iv) it is a Conservation Organization.

15. MISCELLANEOUS PROVISIONS

15.1 Notice to Grantee Before Undertaking Certain Permitted Actions. Grantor shall notify Grantee, EPA and the WMI Group in writing before exercising any reserved right, the exercise of which may have an adverse impact on the Conservation Values associated with this Easement. Whenever notice is required to be given with respect to an activity permitted hereunder, Grantor shall notify Grantee, EPA and the WMI Group in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee, EPA and the WMI Group to make an informed judgment as to its consistency with the purposes of this Easement and all standards contained herein that are applicable to the activity in question.

15.2 Approval By Grantee. Where Grantee's approval is required by any provision of this Easement, Grantee shall grant or withhold its approval in writing within a reasonable time considering the nature of the activity for which approval is sought; the complexity and extent of the documents, plans, drawings reports and studies to be reviewed; and the degree of the potential impact on the Conservation Values or agricultural requirements. Unless otherwise provided with respect to a particular approval requirement, the granting of approval shall be within Grantee's sole discretion, and Grantee's determination with respect thereto shall be final and binding. In any case in which this Easement provides that Grantee may not unreasonably withhold its approval, then, provided Grantee has received a written notice of the request for approval and all of the information required by this Easement to be submitted with such a notice, and that the request is bona fide and made in good faith, a failure by Grantee to respond to such request for approval within sixty (60) days following Grantee's receipt of same shall be deemed an approval of the request by Grantee.

15.3 Use by Third Parties. Grantor may not authorize, allow or permit any third party to use the Property in a manner inconsistent with the terms of this Easement. Accordingly, no right to use the Property, whether in the form of a right-of-way, easement, license, oil, gas or mineral lease, or other right or interest in, on or through the Property, may be conveyed or permitted to be established in, on or through the Property, unless the right or interest is consistent with the terms of this Easement. (These prohibitions do not apply to a right to use the Property that was in existence prior to this Easement unless said right was subordinated to this Easement.) Grantor shall take reasonable and appropriate steps to avoid unauthorized inconsistent activities by third parties. Notwithstanding the foregoing, (a) Grantee may approve, in writing, a grant of a right to use the Property that benefits permitted uses or structures, such as a utility easement, for reasons that Grantee determines, in its sole discretion, are sufficiently extraordinary to justify an exception to the prohibitions, provided that EPA shall be given fifteen (15) days prior notice in order to object to such use, and if EPA does object within such fifteen (15) day time period, such use shall not be permitted; (b) the WMI Group may use the Property as required by the Federal Consent Decree, the State Consent Decree, the UAOs and Environmental Law, and (c) the United States may have access to the Property for any reason allowed pursuant to the Federal Consent Decree or Environmental Law.

15.4 No Public Access. Although this Easement has been created for the benefit of the general public through the protection and preservation of water and land resources and natural beauty, nothing herein contained shall be construed to convey to the general public any right of access to or use of the Property. Grantor shall retain the exclusive right of access to and use of the Property unless otherwise expressly provided in this Easement.

15.5 Easement Binding Upon Successors. The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and his, her, their or its agents, employees, invitees, licensees, tenants, contractors, personal representatives, heirs, successors and assigns, and the above-named Grantee and its representatives, agents, employees, successors and assigns.

15.6 Manner of Giving Notices. All notices pertaining to this Easement shall be in writing delivered to the parties personally or by private courier, or by registered or certified mail, return receipt requested and postage prepaid, at the addresses set forth above or such other addresses as the parties may specifically designate in writing, and with respect to EPA and the WMI Group, at the address set forth below, and shall be deemed delivered and effective upon actual receipt in the event of personal or private courier delivery or deposit with the U.S. Postal Service in the event of mail delivery:

Address of EPA:

William C. Tucker, Esq.
Senior Assistant Regional Counsel
New Jersey Superfund Branch
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, NY 10007

John Prince
Chief, Central New Jersey Remediation Section
New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency - Region II
290 Broadway, 19th Floor
New York, NY 10007

Address of WMI Group:

General Counsel
SC Holdings, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

With a copy to:

Antoinette R. Stone, Esq.
Buchanan Ingersoll PC
1835 Market Street, 14th Floor
Philadelphia, PA 19103

15.7 Captions. The captions in this instrument have been inserted solely for convenience of reference, are not a part of this instrument, and shall have no effect upon construction or interpretation.

15.8 Controlling Law. The laws of the State of New Jersey shall govern the interpretation and performance of this Easement.

15.9 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; and each counterpart shall be deemed an

original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

15.10 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.

15.11 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant, to effectuate the purposes of this Easement and to preserve and protect the Conservation Values to the maximum possible extent. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15.12 No Extinguishment through Merger.

(a) Pursuant to the Federal Consent Decree and the CLF Contract, Grantor and Grantee acknowledge that Grantor will convey fee simple title to the Property to Grantee. When Grantee acquires fee simple title to the Property, it is the express intention of the parties that: (i) Grantee, as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Property by this Easement, (ii) in view of the public interest in its enforcement, this Easement shall survive such simultaneous ownership of fee and Easement interests in the Property, and shall not be extinguished notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged, and (iii) said Grantee shall, as promptly as practicable, but in any event, in accordance with the CLF Contract and the Federal Consent Decree, either assign its interests in this Easement to another EPA-approved Conservation Organization or governmental entity, or convey its fee interest in the Property to an EPA-approved Conservation Organization or governmental entity, in accordance with the requirements of the CLF Contract, the Federal Consent Decree and this Easement, including, without limitation, the provisions of this paragraph. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this paragraph, and shall contain language necessary to continue it in force.

(b) Notwithstanding anything to the contrary in this Easement, if, despite the clear and express intention of the parties, this Easement is extinguished upon the acquisition by Grantee of fee simple title to the Property, Grantee acknowledges and agrees that it shall immediately grant, bargain, transfer and convey unto an EPA-approved Conservation Organization or governmental entity, an easement and interest in perpetuity in the same form and substance as this Easement, on, over and upon the Property.

15.13 Forfeiture. Pursuant to the terms of the CLF Contract, a breach of the CLF Contract by Grantee will result in a forfeiture or reversion of this Easement to Grantor.

15.14 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.15 Termination of Rights and Obligations. A party's personal rights and obligations under this Easement, but not the Easement itself, terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer, and that the party's rights and obligations shall continue with respect to any portion of the Property or any interest in the Easement retained by that party.

15.16 Certificate Concerning Compliance. Upon written request by Grantor or EPA, Grantee shall deliver to Grantor and EPA, or to any prospective purchaser, transferee, mortgagee, lessee or other interested party designated by Grantor, an appropriate document certifying to the best of Grantee's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Easement. Grantee shall provide such certification within forty-five (45) days after Grantee's receipt of the written request. Such certification shall be limited to the condition of the Property as of the date of Grantee's most recent monitoring inspection and may be appropriately limited or qualified by Grantee to reflect such constraints and limitations upon the quality or completeness of the monitoring data as may have existed at the time of such inspection. If (i) Grantor requests a certification based upon more current documentation, or (ii) Grantee reasonably concludes, based upon relevant facts and circumstances, that a new inspection is necessary in order to issue such a certification, then Grantee shall conduct a new inspection, at Grantor's expense, within thirty (30) days of Grantee's receipt of Grantor's written request.

15.17 Additional Enforcement Rights.

(a) The United States, the State of New Jersey Green Acres Program, and any EPA-approved Conservation Organization or governmental entity that provides funds in connection with the acquisition of this Easement shall have the power to enforce any or all of the terms and conditions of this Easement in the same manner and to the same extent as could be done by Grantee.

(b) The Grantor and the Grantee agree and acknowledge that: (1) the United States and the WMI Group have an interest in the parties' compliance with the terms of this Easement; (2) the United States and the WMI Group are third-party beneficiaries hereunder; and (3) the United States and the WMI Group have any and all rights to enforce the terms of this Easement as if they were signatories hereof.

15.18 Recording. As soon as possible following the granting of this Easement, the Grantor shall record such Easement in the Office of the County Clerk, Middlesex County, New Jersey, or other appropriate state or local records office. The parties shall cooperate with each other to carry out any such recording

16. SCHEDULES AND EXHIBITS

The following exhibits are annexed to and shall form a part of this Easement:

Exhibit "A":	UAOs
Exhibit "B":	State Consent Decree
Exhibit "C":	Federal Consent Decree

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this instrument as of the date first above written.

GRANTOR: KIN-BUC, INC.,
a New Jersey corporation

By: _____

Name: Andrew J. Meyer, Jr.

Title: VP

GRANTEE: CLEAN LAND FUND
a not for profit corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF NEW JERSEY)

COUNTY OF Middlesex) SS.:

On this, the 29th day of December, 2004, before me, the undersigned notary public, personally appeared Andrew Magyn, who acknowledged himself to be a VP of KIN-BUE, INC., a New Jersey corporation, and that he/she, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written;

Notary Public

My commission expires:

[SEAL]

STATE OF NEW JERSEY)

COUNTY OF _____) SS.:

On this, the ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____, who acknowledged himself to be a _____ of CLEAN LAND FUND, a not for profit corporation, and that he/she, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

My commission expires:

[SEAL]

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this instrument as of the date first above written.

GRANTEE: CLEAN LAND FUND
a not for profit corporation

By: _____

Name: WILLIAM J PENN

Title: PRESIDENT

STATE OF NEW ^{York}~~JERSEY~~)
COUNTY OF ^{New York}~~Jersey~~) SS.:

On this, the 22 day of December, 2004, before me, the undersigned notary public, personally appeared William J. Penn, who acknowledged himself to be a President of CLEAN LAND FUND, a not for profit corporation, and that ~~he~~ ^{she}, as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

My commission expires:

[SEAL]

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 2004, by and between FILCREST REALTY, INC. having an address at c/o Transtech Industries, Inc., 200 Centennial Avenue, Piscataway, NJ 08854 (hereinafter referred to, together with its assignees, as "Grantor") and the CLEAN LAND FUND, a tax exempt, not-for-profit organization formed pursuant to 26 U.S.C. §501(c)(3), incorporated in Rhode Island, having an address at 815 Beacon Hill Road, P.O. Box 725, Block Island, RI 02087, held in trust for the benefit of its assignee and for the purposes set forth herein (hereinafter referred to, together with its assignees, as "Grantee").

RECITALS

WHEREAS:

A. Grantor is an owner in fee of certain lands (the "Property") designated on the Township of Edison Tax Map as: (1) Block 399, Lots 14, 59, 61, 63, 65, 68, 73, 76, 78, 80, 84, 91, 106, 107 and 108; and (2) Block 400, Lots 26, 31, 37, 43, 44, 45, 47, 49, 56, 59, 60, 61, 63, 67, 68, 70 and a portion of Lot 46 in the Township of Edison, County of Middlesex, State of New Jersey.

B. Grantee intends to accept this Easement as "grantee" in trust for a temporary period until such time as Grantee assigns this Easement to an organization, approved by the EPA, with the primary purposes of promoting and securing the protection, preservation and enhancement of ecologically significant lands, open spaces, natural resources, farmlands and areas of scenic and historical importance, and which organization has the resources to enforce the restrictions herein set forth.

C. The Property is predominantly used for open space. The physical features, vegetation, and other characteristics of the Property have been or will be catalogued in the Baseline Documentation (defined in Paragraph 9, below) compiled in connection with the transfer of this Easement.

D. The Property possesses significant natural, scenic, aesthetic, open-space, plant and wildlife habitat, watershed, wetland, forest, resource conservation and similar features and conservation values that are of great importance to Grantor, Grantee, and the people of the State of New Jersey and the United States, the preservation and protection of which will yield a significant public benefit.

E. The Legislature of the State of New Jersey has declared that the retention of land for open space purposes is important to the present and future economy of the State and the welfare of the citizens of the State.

F. Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

G. Grantor desires to reserve the right to conduct those activities expressly reserved to Grantor in this Easement.

H. For all of the purposes and subject to all the terms and conditions herein set forth, Grantor desires to give and grant to Grantee, in trust, and Grantee desires to accept, as trustee for the benefit of its assignees, the conservation easement hereinafter described.

GRANT OF PERPETUAL EASEMENT

NOW, THEREFORE, in consideration of the foregoing, the sum of _____ (\$ _____) Dollars, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the state of New Jersey, including the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1, et seq., Grantor does hereby grant, bargain, transfer and convey unto Grantee, as trustee for the benefit of its assignee, an easement and interest in perpetuity (the "Easement") on, over and upon the Property, said Property being in the Township of Edison, County of Middlesex, State of New Jersey, of the nature and character, to the extent, and on the terms hereinafter set forth, with which the Grantor and Grantee in their respective capacities for themselves and their respective heirs, administrators, executors, successors and assigns, agree to comply and Grantee by its acceptance of this grant of Easement undertakes to enforce until such time as Grantee assigns this Easement.

1. DECLARATION OF COVENANTS, RESTRICTIONS AND OTHER TERMS

1.1. Definitions. The following terms shall have the following meanings when used herein, unless the context clearly requires otherwise. Terms defined in the singular shall have a correlative meaning when used in the plural and vice versa, and other inflected forms of such defined terms shall likewise have correlative meanings. Unless otherwise expressly provided for herein, capitalized terms used in this Easement shall have the same meaning assigned to them in the CLF Contract and the Federal Consent Decree.

The term "building" means any structure or portion thereof or addition thereto having a roof supported by such things as columns, posts, piers, walls or air and intended for the shelter, business, housing or enclosing of persons, animals or property, but excluding temporary structures (such as tents and portable sanitary facilities) installed for and during special occasions or events and removed immediately thereafter.

The term "CLF Contract" means that certain contract by and between Transtech Industries, Inc., Filcrest Realty, Inc., Kin-Buc, Inc., Inmar Associates, Inc. and the Clean Land Fund which is dated December 30, 2004, and a copy of which is attached as Appendix "F" to the Federal Consent Decree.

The term "Conservation Values" means all those natural, scenic, aesthetic, open space, ecological, plant and wildlife habitat, soil and water resource quality, watershed, floodplain, wetland, and similar features and values that characterize or are associated with the Property.

Specific conservation values of the Property are documented in the Baseline Documentation to be kept on file at the offices of the Grantee, and which is incorporated herein by reference.

The term "construct" means to construct, build, install, place, erect, alter, enlarge, manufacture, assemble, or fabricate by any means or method.

The term "Easement" means this Conservation Easement.

The term "Environmental Law" means any federal, state and local law, statute, rule, order, regulation, ordinance, code, requirement or ruling now or hereafter in effect, imposed by any governmental authority regulating, relating to, or imposing liability or standards of conduct relating to pollution or protection of the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), public health and safety or employee health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

The term "Existing Facilities" means structures that are located on, above or under the Property as of the date of this Easement.

The term "Federal Consent Decree" means that certain consent decree entered into by the plaintiff United States and the defendants in the action styled "United States and New Jersey Department of Environmental Protection v. Chemical Waste Management, Inc. et al., C.A. No. 02-2077 (DNJ).

The term "Hazardous Material" means each and every material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, Hazardous Material, hazardous substance or contaminant under any Environmental Law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any Environmental Law.

The term "maintain" means to keep in good condition, appearance and repair, and to renovate without any increase in exterior dimensions.

The term "NJDEP" means the New Jersey Department of Environmental Protection.

The term "NRD Lots" means those certain lots numbered 3-C, 37, 43, 44, 45, 46, 47, 56, 60 and 61 in Block 400, Township of Edison, Middlesex County, New Jersey, which are some of the lots on which the WMI Group will perform the NRD Project.

The term "NRD Project" means those certain activities that the WMI Group is required to perform under the State Consent Decree.

The term "Passive Recreational Uses" shall mean low-impact outdoor recreational pursuits that do not involve the use, placement, construction or installation of any structure or items of fixed or semi-fixed equipment, or result in any alteration of the land, other than those trail related structures and surface alterations expressly permitted in Para. 6.2 below. By way of example, and without limiting the generality of the foregoing, Passive Recreational Uses shall not include such

things as playing fields, playgrounds, racquet courts, golf courses, skating rinks, tracks, sports stadiums, downhill ski runs and lifts, water parks, shooting ranges, and similar installations.

The Term "SCA Easement" means that certain easement granted on April 25, 1994, to SCA Services, Inc., n/k/a SC Holdings, Inc., a member of the WMI Group, by Filcrest Realty, Inc., on certain lots included in the Property, and recorded in the Deed Records of the Middlesex County Clerk on May 6, 1994, in Deed Book 4147, pages 575 et seq.

The term "State Consent Decree" means that certain consent decree entered into by the Plaintiff New Jersey Department of Environmental Protection and the defendants in the action styled "United States and New Jersey Department of Environmental Protection . v. Chemical Waste Management, Inc., et al., C.A.No. 02-4610 (DNJ).

The term "structure" means any combination of materials to form a construction or fabrication for temporary or permanent occupancy, use or ornamentation, whether constructed on, above or below the surface of the land comprising the Property, including, but not limited to: (i) houses, cabins, mobile homes, trailers, barns, stables, sheds, silos, greenhouses, outhouses, cabanas, and other buildings and similar items of every kind and description, (ii) swimming pools, fences, docks, bridges, decks, satellite dishes and antennae, cellular telephone and other towers, billboards, signs, storage tanks and other accessory structures and fixed items of equipment; (iii) water, sewer, power, fuel and communication lines, other utility systems and related facilities; (iv) culverts, detention basins, and other stormwater or groundwater storage and control facilities; and (v) pads, patios, playing courts, riding rings, paddocks, corrals, pens, walkways, roads, driveways, parking areas and other areas constructed of or surfaced with wood, concrete, macadam, brick, paving stones, cinder block, gravel, clay, stone dust or other impervious or semi-pervious material.

The term "UAO Lots" means those certain lots numbered 3-C, 49, 59, and 70 in Block 400, Township of Edison, Middlesex County, New Jersey, among others, on which certain work is required under the UAOs.

The term "UAOs" means those certain EPA, Region 2, unilateral administrative orders, numbered II-CERCLA-30102, II-CERCLA-60105, II-CERCLA-00114 and II-CERCLA- 93-0101, issued to Grantor and certain members of the WMI Group, among others, and requiring the performance of certain activities on Lots 3-C, 49, 59 and 70 on the Property, among other lots.

The term "EPA" means the United States Environmental Protection Agency.

The term "United States" means the United States of America, including its departments, agencies and instrumentalities.

The term "WMI Group" means Waste Management, Inc. Waste Management Holdings, Inc., Chemical Waste Management, Inc., SCA Services, Inc. n/k/a/ SC Holdings, Inc., SCA Services of Passaic, Inc., Earthline Company, Wastequid, Inc., and Anthony Gaess.

The terms "wetlands" and "wetland areas" mean wetlands as defined by the January 1989 edition of the Federal Manual For Identifying and Delineating Jurisdictional Wetlands, or such other criteria for identifying and delineating wetland areas as may from time to time be

promulgated by an appropriate state or federal governmental agency, provided that such other criteria have been adopted by Grantee for purposes of this Easement by resolution of its governing board.

2. TERM, FUTURE INSTRUMENTS, NOTICE OF TRANSFER, RELATIONSHIP TO PRIOR EASEMENTS AND CONSENT DECREES.

2.1 Perpetual Term. This Easement shall be perpetual and run with the land and shall be binding upon all future owners of any interest in the Property, thus creating open space, easements and restrictions in perpetuity.

2.2 Reference to Easement in Future Instruments & Notice of Transfer. This Easement shall be recorded in the Office of the Clerk of Middlesex County and a reference to the Easement shall be contained in any future deed, lease or document of transfer or conveyance affecting the Property. Grantor shall give written notice to the Grantee and the WMI Group of any such transfer or conveyance of any interest in the Property within ten (10) days following the date of such transfer or conveyance, which shall include the name and address of the Grantee of such interest. Grantor shall provide a copy of this Easement to all subsequent grantees of the fee simple interest in any part or all of the Property. The failure of the Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

3.1 Purposes. The purposes of this Easement include, but are not limited to, the following: (a) that the lands subject to this Easement be protected in their natural, scenic, open and existing state in perpetuity, subject only to the specific rights expressly reserved to the Grantor herein, (b) that the natural features of the Property and the Conservation Values associated with the Property be respected and preserved to the maximum extent consistent with Grantor's exercise of the rights expressly reserved to Grantor by the terms of this Easement; that the Natural Area be forever protected and preserved in its natural, scenic and existing state free from all activities that might damage, compromise or interfere with its ecological diversity, natural beauty or resource quality, or with the natural processes occurring therein; and that future uses of the Property be confined to such activities as are not inconsistent with the said purposes or with the terms and conditions of this Easement.

3.2 (A) Grantor and Grantee agree and acknowledge that Grantor previously conveyed the SCA Easement, annexed hereto as Exhibit "A" and made a part hereof to SCA Services, Inc., n/k/a SC Holdings, Inc. ("SCA"), a member of the WMI Group, to allow and enable SCA to perform certain remedial and restoration activities on several lots in the Property, including, but not limited to, the UAO Lots in Block 400. Grantor and Grantee agree and acknowledge that this Conservation Easement is conveyed subject to the SCA Easement. Grantor and Grantee also agree and acknowledge that the USEPA issued the UAOs, annexed hereto as Exhibit B and made a part hereof, to Grantor and certain members of the WMI Group, among other parties, which require the recipients of those UAOs to perform certain remedial activities on several lots in the Property, including the UAO Lots. This Conservation Easement is also subject to the UAOs and will be construed and implemented so as to allow the Grantor and those certain members of the WMI Group to complete the activities required of them by the UAOs, all of which are permitted by the SCA Easement. Grantor and Grantee also agree and acknowledge that the Grantor and the WMI Group, among other parties, have entered into the State Consent Decree, annexed hereto as Exhibit C and made a part hereof, which requires the WMI Group to perform

certain restoration activities on several lots including, but not limited to, the NRD Lots. This Conservation Easement is also subject to the State Consent Decree and will be construed and implemented so as to allow the WMI Group to complete the activities required of them by the State Consent Decree, all of which are permitted by the SCA Easement. Grantor and Grantee also agree and acknowledge that the Grantor and the WMI Group, among other parties, have entered into the Federal Consent Decree, annexed hereto as Exhibit D and made a part hereof, which requires the Grantor and the WMI Group to perform certain activities on the Property. This Conservation Easement is also subject to the Federal Consent Decree and will be construed and implemented so as to allow Grantor and the WMI Group to complete activities required of them under the Federal Consent Decree.

(b) If there is a conflict between this Easement and the Federal Consent Decree, then the Federal Consent Decree shall control. If there is a conflict between this Easement and the State Consent Decree, then the State Consent Decree shall control. If there is a conflict between this Easement and the UAOs, then the UAOs shall control.

4. Rights of Grantee. To accomplish the purposes of this Easement, the following rights are hereby conferred upon Grantee and its employees, agents and representatives in trust for the benefit of its assignee:

(a) to have access to and enter upon the Property for the purpose of inspecting the Property, including, if necessary, the right to enter upon and cross over other lands owned by Grantor, or over which Grantor has a right of ingress and egress, to:

(i) monitor compliance with and otherwise enforce the terms of this Easement;

(ii) conduct scientific research and biological inventories; ;

(iii) preserve and protect the Conservation Values and the natural features of the Property (subject to Grantor's reserved rights hereunder), and in connection therewith, to determine the consistency of any activity or use for which no express provision is made herein with the purposes of this Easement and the Conservation Values;

provided, however, that, except in cases in which Grantee determines that immediate entry is required to prevent, terminate or mitigate any violation of this Easement, such entry shall be upon prior reasonable notice to Grantor and, with respect to the NRD Lots and the UAO Lots, to the WMI Group; and further provided, however, that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

(b) to prevent Grantor or any third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on or use of the Property that is inconsistent with the purposes, terms and conditions of this Easement; to enforce this Easement in the case of any breach or violation by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by means of any remedy provided for herein or otherwise available at law or in equity; to require of Grantor or third persons the restoration of such areas or features of the Property as may be damaged by any inconsistent activity or use, and, if Grantor shall fail to do so and if Grantee

shall so elect, to carry out reasonable and appropriate restoration activities on the Property following a violation of this Easement, and

(c) subject to the prior approval of Grantor, as to their size, design and location, which approval shall not be unreasonably withheld, to erect signs identifying Grantee as the holder of this Easement.

5. Prohibited Uses and Activities. Activities on and uses of the Property that are inconsistent with the purposes of this Easement are prohibited. Without limiting the generality of the foregoing, from and after the date of this Easement the following activities and uses are expressly forbidden on, over, or under the Property, except as provided in Paragraph 6 and except as necessary to implement the Federal Consent Decree, and the State Consent Decree, and to comply with the UAOs:

(a) construction, building, installation, placement, erection, assembly, manufacture, fabrication, alteration, enlargement, maintenance, repair, renovation or replacement of any structure or structures (as defined herein) on, above or beneath the surface of the Property, unless expressly authorized by this Easement;

(b) commercial or industrial uses of the Property;

(c) processing, storage, disposal, spreading, placing or dumping of refuse, rubbish, debris, garbage, ashes, sawdust, bark, trash, dredge spoil, chemicals, Hazardous Materials, animal waste, fertilizers, abandoned vehicles, appliances, or machinery, or of any other substance or material that has the potential to cause significant harm or damage to plants, wildlife, the scenic quality of the Property or other Conservation Values;

(d) excavation or removal of materials, including, but not limited to, dredging, mining, slant mining, drilling, quarrying or other extraction of loam, peat, turf, soil, gravel, sand, coal, rock, minerals, petroleum, or natural gas, or other natural resource from the Property;

(e) disturbance or alteration of the surface topography or natural features of the Property, except if: (i) the disturbance or surface alteration is reasonably necessary in order to carry out an activity that is expressly permitted by this Easement, (ii) the circumstances are such that no feasible alternatives are available that would avoid the need for such disturbance or alteration, and (iii) appropriate measures are taken to minimize and mitigate any adverse impacts on the Property or the Conservation Values;

(f) draining, dredging, filling, diking, or other disturbance of Wetland Areas;

(g) alteration, or manipulation of the course, flow, size other characteristics of any streams, rivers, lakes or other water bodies (other than artificially-created farm ponds) located on the Property;

(h) cutting, destruction or removal of trees, limbs, shrubs, native plants, leaf litter, detritus, or other plant material, vegetation or naturally occurring substance (collectively, "vegetation"), whether alive, standing-dead, or fallen, and regardless of its characteristics, except: (i) control of non-native vegetation through responsible application of herbicides and/or

biological control measures; and (ii) trimming or removal of dead, fallen, diseased or infected trees, tree limbs and other vegetation that pose a health or safety hazard or that obstruct passage on paths, trails, roads or drives lawfully existing on the Property;

(i) planting, cultivation or propagation of any invasive or non-native species;

(j) use of chemical or biological pesticides, herbicides, fungicides, rodenticides, or other biocides on the Property except in a responsible manner to control one or more species generally acknowledged to be a pest or invasive species, and provided that: (i) all applicable Environmental Laws, governmental policies and recommendations concerning the proper use and application of the substance in question are complied with, and (ii) the substance in question does not pose any significant risk of harm to any threatened or endangered species or rare community types as identified by the New Jersey Natural Heritage Database or similar compendium;

(k) use of trucks, all-terrain vehicles, trail bikes and other motorized off-road vehicles except: (i) vehicles, machinery and equipment used for maintenance and cultivation of lawns and gardens in the open areas; and (ii) use of vehicles for emergency purposes and to carry out required management actions on the Property;

(l) except as expressly permitted herein, the conduct of any other activities on or uses of the Property that are likely to have a significant and demonstrable adverse impact on drainage, flood control, water conservation, soil conservation and erosion control, plant and wildlife habitat or any of the Conservation Values;

(m) partition, division or subdivision, legal or de facto, of the Property, or any portion thereof, into more than one ownership, including along any existing interior lot lines; provided, however, that Grantee may, in Grantee's reasonable discretion, grant approval for a subdivision or boundary line adjustment as long as the same would not compromise any of the conservation purposes of this Easement or result in increased development on the Property or on any adjoining lands, and that the deed transferring any subdivided parcel conspicuously discloses the existence of this Easement; and

6.1 Acts and Uses Not Otherwise Prohibited. Grantor reserves all rights inherent in the ownership of the Property that are not prohibited by, or inconsistent with, the terms and purposes of, this Easement.

6.2 Passive Recreational Use.

Except as prohibited herein, Grantor may use and allow the Property to be used for Passive Recreational Uses (as defined in Para. 1.1), such as: nature study and observation, hiking, picnicking, sledding, cross-country skiing, and bicycling. Recreational activities other than Passive Recreational Uses shall not be permitted. The scope and frequency of, number of participants in, and manner of carrying out such Passive Recreational Uses shall be limited as necessary to ensure that they do not result in significant and demonstrable damage to, or degradation of, the Property or the Conservation Values. In connection with, and to enhance and support, the foregoing permitted Passive Recreational Uses, Grantor may maintain existing trails and, with prior notice to and approval of Grantee, which approval shall not be unreasonably withheld, clear and maintain additional trails, provided that no trail shall be improved with macadam, gravel, paving stones or other impervious or semi-pervious material. Grantor may also (i) construct and maintain minor rustic boundary markers, trail markers, trail-related improvements, reasonably necessary to their safe enjoyment, or the control of runoff and trail-related damage such as steps, bog bridges, erosion bars and railings, small unlighted informational and interpretive signs, registration boxes, and wildlife observation blinds, provided that they shall be constructed of rustic natural colored materials that blend in with the natural surroundings and complement the natural and scenic features of the landscape; and (ii) install barriers and low fences where necessary to prevent use or access by motor vehicles or to protect fragile natural resources.

6.3 Soil and Water Conservation. Grantor may engage in such soil and water conservation practices or habitat restoration projects as may be necessary or appropriate, provided that such activities further the goals intended to be achieved by this Easement and protect the Conservation Values.

6.4 Signs. Grantor reserves the right to install signs stating the name and address of the Property and the names of persons living on the Property, advertising the Property for sale or rent, posting the Property to control unauthorized entry or use, and advertising or regulating on-site activities expressly permitted by the terms of this Easement; provided, however, that: (a) no sign shall exceed sixteen (16) square feet in area, and (b) Grantor shall not design or locate such signs in such a way as to significantly diminish the scenic character of the Property.

7. Intentionally Omitted.

8. Transfer and Extinguishment of Development Rights. Except as specifically reserved to Grantor in this Easement, and subject to the terms and conditions of this Easement, the SCA Easement, the State Consent Decree, the Federal Consent Decree, the UAOs and Environmental Law, Grantor hereby grants to Grantee, in trust for the benefit of its assignee, (a) all rights to construct, install, erect, or enlarge structures upon, develop or in any other manner improve or alter the Property in a manner that would violate the terms, or be inconsistent with the purposes, of this Easement, and (b) all development credits and all transferable, cluster or other development rights, howsoever designated, that are or may hereafter be allocated to, associated with, implied, reserved, or inherent in the Property. Grantor and Grantee agree that such rights are terminated and extinguished, and may not be used on any portion of the Property, transferred to any other property, or used for the purpose of calculating permissible size, height, bulk or number of structures, development density, lot yield or any similar development variable pertaining to the

Property or any other property. All of Grantor's right, title and interest in and to any such rights that may hereafter be created shall automatically be vested in Grantee and extinguished immediately upon their becoming legally effective. Grantor hereby appoints Grantee as Grantor's attorney-in-fact for, and only for, the limited purpose of executing and recording such further instruments as may be necessary or appropriate to effectuate the extinguishment of such rights. Grantor acknowledges that the power of attorney herein granted is coupled with an interest in the subject matter and is irrevocable. If Grantee shall have occasion to exercise the power of attorney herein granted, Grantee shall notify Grantor within a reasonable time following such exercise specifying the action taken and shall provide to Grantor copies of all instruments evidencing such action.

9. Baseline Documentation. In order to establish the uses and condition of the Property as of the date of this Easement so as to be able to properly monitor its future uses and condition and assure compliance with the terms hereof, Grantor will make available to Grantee all existing maps, photographs, surveys, plans, reports, studies and other documentation in Grantor's possession that describe or depict the current uses and condition of the Property. In addition, Grantee shall have the right to prepare such additional documentation, such as surveys, maps, drawings, photographs, on-site delineations, plant and wildlife inventories, and soil, water and air quality tests, as it deems appropriate. Grantee, its agents, employees, and consultants, shall have the right to enter upon the Property at reasonable times and by prior appointment for this purpose. The aforementioned documentation shall constitute an inventory of the Property's relevant features and conditions (the "Baseline Documentation"). The Baseline Documentation shall be kept on file at Grantee's offices and shall be accessible to Grantor upon reasonable notice during normal business hours. The parties agree that if a controversy arises about the condition or uses of the Property as of the date of this Easement, the parties may use other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy. Grantor and Grantee shall each provide to the other, without charge, a copy of all additional documentation concerning the Property prepared by or for Grantor or Grantee, from time to time. The Baseline Documentation shall include a map and description of all the installations maintained under the UAOs, together with a description of the activities that the recipients of the UAOs must undertake under the UAOs, and a map and description of the NRD Project, together with a description of the activities that the WMI Group must undertake to complete the NRD Project.

10. REMEDIES AND ENFORCEMENT

10.1 Notice of Violation and Opportunity to Cure. If Grantee determines that a violation of this Easement by Grantor has occurred, is occurring, or is threatened, Grantee shall give a written notice thereof (a "Notice of Violation") to Grantor, EPA and the WMI Group, summarizing the facts in Grantee's possession concerning the nature of the violation. Upon receipt of a Notice of Violation, Grantor shall immediately (a) cease those actions that have given rise to the alleged violation, and (b) take such actions as may be necessary to prevent any further harm or damage to the Property or the Conservation Values. Within sixty (60) days after the date of the Notice of Violation, Grantor shall cure those violations by Grantor of this Easement and restore the Property to the condition that would have existed had there been no violation, provided, however, that if the violation is such that it cannot reasonably be cured within such sixty (60) day period, Grantor shall commence to cure such violation within the sixty (60) day period and shall thereafter diligently pursue the same to completion, and the period for cure shall be

extended for such time as is reasonably necessary in order to permit the actions required to effect such cure to be diligently completed. If Grantee, in its sole judgment, believes that circumstances are such that immediate action is required to prevent or mitigate significant harm or damage to the Property or the Conservation Values, Grantee may pursue its remedies without waiting for any period provided for cure to expire, and without prior notice to Grantor (except as may be required by law).

10.2 Remedies. Subject to the notice and opportunity to cure provisions set forth above, Grantee shall be entitled to preliminary restraints, and to injunctive and other equitable relief to prevent threatened or continuing violations of this Easement, and to otherwise enforce the terms of this Easement and including, without limitation, relief requiring Grantor to remove offending structures and otherwise restore the Property to the condition that would have existed had there been no violation of this Easement. Grantor agrees that Grantee's remedies at law for violation of this Easement will be inadequate and that Grantee shall be entitled to the injunctive relief described herein, and to specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee shall also be entitled to recover damages for violation of this Easement, including, but not limited to: (a) damages for harm to, and degradation, impairment, disturbance and loss of, natural or scenic features of the Property and the Conservation Values associated with the Property; (b) all costs necessary to restore the Property to the condition that would have existed had there been no violation of this Easement; and (c) the value of minerals, soil, sand, timber, or other natural resources sold or removed from the Property in violation of this Easement. The remedies described herein shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

10.3 Costs of Enforcement. Grantor shall bear all reasonable costs incurred by Grantee if Grantee prevails in any proceeding commenced by Grantee to enforce this Easement including, but not limited to, court costs, reasonable attorneys' fees and fees of expert witnesses, and all costs of restoration necessitated by the violation.

10.4 Forbearance. Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver; nor shall Grantor be entitled to assert any defense based upon laches, estoppel or prescription with respect to any violation of this Easement as to which Grantee was not specifically notified by Grantor in writing.

10.5 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant harm or damage to the Property resulting from such causes.

10.6 Restoration Plans. If restoration work is required as a result of a violation, Grantor shall submit a detailed restoration plan to Grantee for its approval prior to undertaking restoration

activities on the Property. All restoration shall be carried out in accordance with property restoration guidelines and standards adopted by Grantee from time to time.

11. INDEMNIFICATION

11.1 By Grantor. Grantor hereby release and agree to hold harmless, indemnify and defend Grantee and its members, trustees, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, claims, demands, orders, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or wrongful acts of any of the Indemnified Parties, (b) the obligations specified in this Article, (c) the representations and warranties contained in Paragraph 14.1, and (d) the presence or release upon or about the Property of any Hazardous Material or the violation or alleged violation of any Environmental Law unless caused by any of the Indemnified Parties.

11.2 By Grantee. Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor and its employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, claims, demands, orders, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property (other than damage necessarily associated with restoration activities), resulting from any act or omission of Grantee or its members, trustees, officers, employees, agents, and contractors while on the Property in connection with the exercise of any monitoring, enforcement or other rights conferred upon Grantee by this Easement.

12. ASSIGNMENT

12.1 Right to Assign. Grantee intends to transfer and assign, and any future assignee of this Easement, may at any time, upon thirty (30) days' notice to Grantor, EPA and the WMI Group, transfer and assign this Easement and the rights and obligations created hereby, in whole or in part, to one or more EPA-approved Conservation Organizations or governmental entities pursuant to the Federal Consent Decree; provided, however, that the assignee shall simultaneously with such assignment assume the obligation to carry out the conservation purposes for which this Easement is granted. A copy of such assignment shall be provided to EPA and the WMI Group within ten (10) days of the effective date of such assignment.

12.2 Executory Limitation. If Grantee shall cease to function as a non-profit corporation with one of its primary purposes being the preservation of natural resources and open space (other than as the result of a merger into or consolidation with any other non-profit corporation with similar purposes), or shall be liquidated or dissolved, upon the occurrence of such event, Grantee shall assign all of its rights and interest in the Property and delegate all of its responsibilities under this Easement to one or more EPA-approved Conservation Organizations or governmental entities pursuant to the federal Consent Decree..

12.3 Release of Grantee's Further Obligations. The holder of this Easement immediately before any such assignment shall thereafter have no further obligation to monitor compliance with, or enforce the provisions of, this Easement; provided that the assignee meets the requirements set forth above and has assumed the obligation to monitor, abide by the terms of and enforce this Easement.

13. CONDEMNATION; TERMINATION

13.1 Condemnation Proceedings. Should all or part of the Easement Property be taken in exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, by any public, corporate, or other authority so as to terminate, abrogate or limit the restrictions created by this Easement, in whole or in part, Grantor and Grantee shall join in appropriate actions to challenge such taking. In the event Grantor and Grantee are unable to prevent a taking notwithstanding their reasonable and appropriate efforts to the contrary, Grantor and Grantee shall join in appropriate actions to recover the full value of the interests in the Easement Property subject to the taking or in lieu purchase, and all direct and incidental damages, costs and fees occasioned thereby. All expenses incurred jointly by Grantor and Grantee in connection with such actions shall be borne by them in the same proportion set forth below with respect to the sharing of the proceeds of a condemnation award, sale, lease, exchange or other disposition of the Property.

13.2 Judicial and Statutory Termination Proceedings. This Easement is intended to be of perpetual duration and therefore may not be terminated by mutual agreement of the Grantor and the Grantee. However, in the event an unexpected change in circumstances arises in the future that makes it impossible to accomplish the purposes of this Easement, this Easement may be extinguished in whole or in part through an appropriate judicial proceeding (and only through a judicial proceeding). In such event the Grantor shall also satisfy all other applicable legal requirements, including those set forth in the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1, et seq., as amended (or any successor provision). Grantor and Grantee acknowledge the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, that neighboring properties may in the future be put entirely to such prohibited uses, and that Grantor may not be able in the future to conduct or implement any or all of the uses permitted under the terms of this Easement. However, such circumstances shall not be deemed to justify the termination or extinguishment of this Easement.

13.3 Division of Proceeds; Valuation of Easement. Grantee shall be entitled to receive, from the net proceeds of a condemnation award or of a sale, lease, exchange or other disposition of all or any portion of the Property following termination or extinguishment of this Easement, an amount equal to the stipulated fair market value of the Easement, or proportionate part thereof, determined as provided herein. This Easement constitutes a real property interest which the parties stipulate to have a fair market value determined by multiplying (a) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable solely to permitted improvements by Grantor), by (b) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

14. REPRESENTATIONS AND WARRANTIES

14.1 By Property Owners. Grantor represents and warrants to Grantee that, to the best of Grantor's knowledge and belief; (i) it owns the Property in fee simple, free and clear of all liens and mortgage interests that have not been legally subordinated to this Easement, subject to the SCA Easement, the State Consent Decree, the Federal Consent Decree and the UAOs identified in paragraph 3.2 above; (ii) it has sole possession of the Property, has not entered into any contract to sell or lease the Property to someone else, and has not given anyone else any right of refusal, option or other rights concerning the purchase or lease of the Property; (iii) no person or entity possesses the right to remove any vegetation, mineral or other material from the Property, or carry out any other activity which is inconsistent with the purposes and terms of this Easement; (iv) the Property complies with all federal, state and local laws, regulations and requirements applicable to the Property and its use; (v) there is no litigation or other judicial, quasi-judicial or administrative proceeding pending or threatened that in any way affects or relates to the Property; (vi) there are no judgments, liens or other legal obligations that may be enforced against the Property; (vii) no Hazardous Material is present, or has been generated, treated, stored, disposed of or transported in, on or across the Property, and there are no underground storage tanks on the Property; and (viii) no civil or criminal proceedings or investigations have been instigated, and no notices, claims, demands or orders have been received, arising out of any violation or alleged violation of any federal, state or local law, regulation or requirement applicable to the Property or its use; except as set forth in this Easement.

14.2 By Grantee. Grantee represents and warrants to Grantor that: (i) it is a charitable nonprofit corporation exempt from income tax under section 501(c)(3) of the Code; (ii) it is a "qualified organization" within the meaning of section 170(h) of the Code; (iii) it is a "charitable conservancy" as defined in the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1, et seq.; and (iv) it is a Conservation Organization.

15. MISCELLANEOUS PROVISIONS

15.1 Notice to Grantee Before Undertaking Certain Permitted Actions. Grantor shall notify Grantee, EPA and the WMI Group in writing before exercising any reserved right, the exercise of which may have an adverse impact on the Conservation Values associated with this Easement. Whenever notice is required to be given with respect to an activity permitted hereunder, Grantor shall notify Grantee, EPA and the WMI Group in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee, EPA and the WMI Group to make an informed judgment as to its consistency with the purposes of this Easement and all standards contained herein that are applicable to the activity in question.

15.2 Approval By Grantee. Where Grantee's approval is required by any provision of this Easement, Grantee shall grant or withhold its approval in writing within a reasonable time considering the nature of the activity for which approval is sought; the complexity and extent of the documents, plans, drawings reports and studies to be reviewed; and the degree of the potential impact on the Conservation Values or agricultural requirements. Unless otherwise provided with respect to a particular approval requirement, the granting of approval shall be within Grantee's sole discretion, and Grantee's determination with respect thereto shall be final and binding. In any

case in which this Easement provides that Grantee may not unreasonably withhold its approval, then, provided Grantee has received a written notice of the request for approval and all of the information required by this Easement to be submitted with such a notice, and that the request is bona fide and made in good faith, a failure by Grantee to respond to such request for approval within sixty (60) days following Grantee's receipt of same shall be deemed an approval of the request by Grantee.

15.3 Use by Third Parties. Grantor may not authorize, allow or permit any third party to use the Property in a manner inconsistent with the terms of this Easement. Accordingly, no right to use the Property, whether in the form of a right-of-way, easement, license, oil, gas or mineral lease, or other right or interest in, on or through the Property, may be conveyed or permitted to be established in, on or through the Property, unless the right or interest is consistent with the terms of this Easement. (These prohibitions do not apply to a right to use the Property that was in existence prior to this Easement unless said right was subordinated to this Easement.) Grantor shall take reasonable and appropriate steps to avoid unauthorized inconsistent activities by third parties. Notwithstanding the foregoing, (a) Grantee may approve, in writing, a grant of a right to use the Property that benefits permitted uses or structures, such as a utility easement, for reasons that Grantee determines, in its sole discretion, are sufficiently extraordinary to justify an exception to the prohibitions, provided that EPA shall be given fifteen (15) days prior notice in order to object to such use, and if EPA does object within such fifteen (15) day time period, such use shall not be permitted; (b) the WMI Group may use the Property as permitted by the SCA Easement, and as required by the Federal Consent Decree, the State Consent Decree, the UAOs and Environmental Law; and (c) the United States may have access to the Property for any reason allowed pursuant to the Federal Consent Decree or Environmental Law.

15.4 No Public Access. Although this Easement has been created for the benefit of the general public through the protection and preservation of water and land resources and natural beauty, nothing herein contained shall be construed to convey to the general public any right of access to or use of the Property. Grantor shall retain the exclusive right of access to and use of the Property unless otherwise expressly provided in this Easement.

15.5 Easement Binding Upon Successors. The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and his, her, their or its agents, employees, invitees, licensees, tenants, contractors, personal representatives, heirs, successors and assigns, and the above-named Grantee and its representatives, agents, employees, successors and assigns.

15.6 Manner of Giving Notices. All notices pertaining to this Easement shall be in writing delivered to the parties personally or by private courier, or by registered or certified mail, return receipt requested and postage prepaid, at the addresses set forth above or such other addresses as the parties may specifically designate in writing, and with respect to EPA and the WMI Group, at the addresses set forth below, and shall be deemed delivered and effective upon actual receipt in the event of personal or private courier delivery or deposit with the U.S. Postal Service in the event of mail delivery:

Address of EPA:

William C. Tucker, Esq.
Senior Assistant Regional Counsel
New Jersey Superfund Branch
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, NY 10007

John Prince
Chief, Central New Jersey Remediation Section
New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency - Region II
290 Broadway, 19th Floor
New York, NY 10007

Address of WMI Group:

General Counsel
SC Holdings, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

With a copy to:

Antoinette R. Stone, Esq.
Buchanan Ingersoll, PC
1835 Market St., 14th Fl.
Philadelphia, PA 19103

15.7 Captions. The captions in this instrument have been inserted solely for convenience of reference, are not a part of this instrument, and shall have no effect upon construction or interpretation.

15.8 Controlling Law. The laws of the State of New Jersey shall govern the interpretation and performance of this Easement.

15.9 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; and each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

15.10 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.

15.11 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant, to effectuate the purposes of this Easement and to preserve and protect the Conservation Values to the maximum possible extent. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15.12 No Extinguishment through Merger.

(a) Pursuant to the Federal Consent Decree and the CLF Contract, Grantor and Grantee acknowledge that Grantor will convey fee simple title to the Property to Grantee. When Grantee acquires fee simple title to the Property, it is the express intention of the parties that: (i) Grantee, as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Property by this Easement, (ii) in view of the public interest in its enforcement, this Easement shall survive such simultaneous ownership of fee and Easement interests in the Property, and shall not be extinguished notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged, and (iii) said Grantee shall, as promptly as practicable, but in any event, in accordance with the CLF Contract and the Federal Consent Decree, either assign its interests in this Easement to another EPA-approved Conservation Organization or governmental entity or convey its fee interest in the Property to an EPA-approved Conservation Organization or governmental entity, in accordance with the requirements of the CLF Contract, the Federal Consent Decree and this Easement, including without limitation the provisions of this paragraph. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this paragraph, and shall contain language necessary to continue it in force.

(b) Notwithstanding anything to the contrary in this Easement, if, despite the clear and express intention of the parties, this Easement is extinguished upon the acquisition by Grantee of fee simple title to the Property, Grantee acknowledges and agrees that it shall immediately grant, bargain, transfer and convey unto an EPA-approved Conservation Organization or governmental entity, an easement and interest in perpetuity in the same form and substance as this Easement, on, over and upon the Property.

15.13 Forfeiture. Pursuant to the terms of the CLF Contract, a breach of the CLF Contract by Grantee will result in a forfeiture or reversion of this Easement to Grantor.

15.14 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.15 Termination of Rights and Obligations. A party's personal rights and obligations under this Easement, but not the Easement itself, terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to

transfer shall survive transfer, and that the party's rights and obligations shall continue with respect to any portion of the Property or any interest in the Easement retained by that party.

15.16 Certificate Concerning Compliance. Upon written request by Grantor or EPA, Grantee shall deliver to Grantor and EPA, or to any prospective purchaser, transferee, mortgagee, lessee or other interested party designated by Grantor, an appropriate document certifying to the best of Grantee's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Easement. Grantee shall provide such certification within forty-five (45) days after Grantee's receipt of the written request. Such certification shall be limited to the condition of the Property as of the date of Grantee's most recent monitoring inspection and may be appropriately limited or qualified by Grantee to reflect such constraints and limitations upon the quality or completeness of the monitoring data as may have existed at the time of such inspection. If (i) Grantor requests a certification based upon more current documentation, or (ii) Grantee reasonably concludes, based upon relevant facts and circumstances, that a new inspection is necessary in order to issue such a certification, then Grantee shall conduct a new inspection, at Grantor's expense, within thirty (30) days of Grantee's receipt of Grantor's written request.

15.17 Additional Enforcement Rights.

(a) The United States, the State of New Jersey Green Acres Program, and any EPA-approved Conservation Organization or governmental entity that provides funds in connection with the acquisition of this Easement shall have the power to enforce any or all of the terms and conditions of this Easement in the same manner and to the same extent as could be done by Grantee.

(b) The Grantor and the Grantee agree and acknowledge that: (1) the United States and the WMI Group have an interest in the parties' compliance with the terms of this Easement; (2) the United States and the WMI Group are third-party beneficiaries hereunder; and (3) the United States and the WMI Group have any and all rights to enforce the terms of this Easement as if they were signatories hereof.

15.18 Recording. As soon as possible following the granting of this Easement, the Grantor shall record such Easement in the Office of the County Clerk, Middlesex County, New Jersey, or other appropriate state or local records office. The parties shall cooperate with each other to carry out any such recording

16. SCHEDULES AND EXHIBITS

The following exhibits are annexed to and shall form a part of this Easement:

Exhibit "A":	SCA Easement
Exhibit "B":	UAOs
Exhibit "C":	State Consent Decree
Exhibit "D":	Federal Consent Decree

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this instrument as of the date first above written.

GRANTOR: FILCREST REALTY, INC.,
a New Jersey corporation

By: _____

Name: ANDREW J. MAYER, JR.

Title: VP

GRANTEE: CLEAN LAND FUND
a not for profit corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF NEW JERSEY)

COUNTY OF Middlesex

SS.:

On this, the 29th day of December, 2004, before me, the undersigned notary public, personally appeared Andrew Mayer, who acknowledged himself to be a VP of FILCREST REALTY, INC., a New Jersey corporation, and that he/she, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

My commission expires:

[SEAL]

STATE OF NEW JERSEY)

COUNTY OF)

SS.:

On this, the ____ day of _____, 2004, before me, the undersigned notary public, personally appeared _____, who acknowledged himself to be a _____ of CLEAN LAND FUND, a not for profit corporation, and that he/she, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

My commission expires:

[SEAL]

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this instrument as of the date first above written.

GRANTEE: CLEAN LAND FUND
a not for profit corporation

By: _____

Name: WILLIAM J. PENN

Title: PRESIDENT

STATE OF NEW ^{York}~~JERSEY~~)
)
COUNTY OF New York) SS.:

On this, the 22 day of December, 2004, before me, the undersigned notary public, personally appeared William J Penn, who acknowledged himself to be a President of CLEAN LAND FUND, a not for profit corporation, and that he/she, as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

My commission expires:

[SEAL]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

-----X
IN THE MATTER OF

Kin-Buc Landfill, Edison,
New Jersey:

Anthony Gaess,
Marvin Mahan,
Robert Meagher,
Earthline Company,
Chemical Waste Management, Inc.,
Filcrest Realty, Inc.,
Inmar Associates, Inc.,
Kin-Buc Inc.,
SCA Services, Inc.,
SCA Services of Passaic, Inc.,
Transtech Industries, Inc.,
f/k/a Scientific Inc., and
Wasteguid, Inc.

Respondents.

Proceeding Pursuant to §106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended,
42 U.S.C. §9606(a).

ADMINISTRATIVE ORDER

Index No.
II-CERCLA-00114

-----X
I. JURISDICTION

A. This Amended Administrative ORDER ("Amended ORDER" or "ORDER") is issued to the above-captioned Respondents pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, dated January 23, 1987, and duly redelegated to the Regional Administrator of EPA, Region II. Notice of this Amended ORDER has been provided to the New Jersey Department of Environmental Protection ("DEP") pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

B. This Amended ORDER amends portions of the Administrative Orders bearing Docket Nos. II-CERCLA-30102 and II-CERCLA-60105 issued September 23, 1983 and March 25, 1986, respectively, by the Regional Administrator, EPA Region II. This Amended ORDER amends those portions of EPA Order No. II-CERCLA-30102 which are inconsistent with the requirements of this ORDER. This Amended ORDER also amends those portions of EPA Order II-CERCLA-60105 which are inconsistent with the provisions of this ORDER. Provided, that, for purposes of enforcement of the requirements of EPA Orders Nos. II-CERCLA-30102 and II-CERCLA-60105, including accrual of penalties pursuant to 42 U.S.C §9606(a) with respect to those Orders, the specification of a date in this Amended ORDER for the performance of any task does not, and is not intended to, negate, supercede, abolish, or otherwise excuse any deadlines, schedules, or performance requirements in effect prior to the effective date of this Amended ORDER (including dates by which performance was to have been achieved) specified in EPA Order No. II-CERCLA-30102, EPA Order No. II-CERCLA-60105, the Operable Unit I RD/RA Work Plan, or the Operable Unit II RI/FS Work Plan.

II. DEFINITIONS

As used in this ORDER, unless the context clearly requires some other meaning, the following terms shall have the following meanings:

A. CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq.

B. EPA shall mean the United States Environmental Protection Agency, Region II.

C. The Kin-Buc Site or the Site shall mean the facility, as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9) (including the real property and all structures, soil and containers thereon) which is located at 383 Meadow Road, Edison, New Jersey, and commonly known as the Kin-Buc Sanitary Landfill.

D. DEP shall mean the New Jersey Department of Environmental Protection.

E. Hazardous substance shall mean any substance that falls within the definition of a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and shall also mean any mixture(s) containing any such hazardous substance(s) at any concentration.

F. Facility Coordinator shall mean the person designated by the Respondents who will be charged with the duty of being at all times knowledgeable of the performance of all work performed pursuant to this ORDER.

G. National Contingency Plan or NCP shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, at 40 C.F.R. Part 300 et seq., and all amendments or modifications thereto.

H. Operable Unit I ROD shall mean the Record of Decision for the First Operable Unit at the Site, specifying remedial measures for source control, which was signed by the Regional Administrator of EPA Region II on September 28, 1988, and which selected the remedy for the First Operable Unit at the Site.

I. Operable Unit I RD/RA shall mean the Remedial Design and Remedial Action for the First Operable Unit at the Site, consisting of design and construction of source control measures and post-remedial monitoring, operation and maintenance in accordance with the Operable Unit I ROD.

J. Operable Unit II RI/FS shall mean the Remedial Investigation and Feasibility Study for the Second Operable Unit to determine the nature and extent of contamination at the Site and any off-site impacts resulting from contaminant migration from the Site.

K. Respondents shall mean each individual and corporation named in the caption to this ORDER, including each corporation's officers, employees, agents, assigns, and successors.

L. Unless otherwise specified herein, all terms used herein shall have their ordinary meanings except that those terms defined under Section 101 of CERCLA, 42 U.S.C. Section 9601, shall have the meanings specified therein.

III. PARTIES BOUND

A. This ORDER shall apply to and be binding upon each and every Respondent, its principals, officers, agents, directors, employees, assigns, and successors. Respondents are jointly and severally responsible for carrying out all activities required by this ORDER. No change in the ownership, corporate status, or other control of any Respondent shall alter any of that Respondent's obligations under this ORDER.

B. Respondents shall provide a copy of this ORDER to any prospective owner or successor before a controlling interest in any Respondent's assets, property rights or stock are transferred to that prospective owner or successor. Respondents shall provide

a copy of this ORDER to each contractor, sub-contractor, laboratory, or consultant retained to perform any services under this ORDER, within fifteen (15) calendar days after the effective date of this ORDER or on the date of such retainer, whichever date occurs later. Respondents shall also provide a copy of this ORDER to each person representing any Respondent with respect to the Site or response action conducted pursuant to this ORDER, and shall condition all contracts and subcontracts entered into hereunder upon performance of all such response actions in conformity with the terms of this ORDER. With regard to the activities undertaken pursuant to this ORDER, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. Section 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this ORDER and for ensuring that their contractors, subcontractors and agents comply with this ORDER, and perform all activities in accordance with this ORDER.

C. Within fifteen (15) calendar days after the effective date of this ORDER each Respondent that owns real property comprising all or part of the Site shall record a copy or copies of this ORDER in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this ORDER is indexed to the titles of each and every property at the Site so as to provide notice to third parties of the issuance and terms of this ORDER with respect to those properties. Respondents shall, within twenty (20) calendar days of the effective date of this ORDER, send notice of such recording and indexing to EPA.

D. Not later than sixty (60) calendar days prior to any transfer by any Respondent of any real property interest in any property included within the Site, Respondents shall submit a true and correct copy of all transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

IV. FINDINGS

1. This Amended ORDER incorporates by reference the findings of EPA Order Docket No. II-CERCLA-30102 and EPA Order Docket No. II-CERCLA-60105 in their entirety.

2. The Site consists of two major mounds and one minor mound. The larger of the two major mounds, designated Kin-Buc I, covers approximately 30 acres and rises to a maximum elevation of 93 feet. The other major mound, designated Kin-Buc II, covers approximately 12 acres, rises to a maximum elevation of 51 feet and is located just north of Kin-Buc I. The low lying minor mound covers approximately 9 acres, rises 15 to 20 feet high and

is designated as Mound B. Mound B lies west-southwest of Kin-Buc I, across the Edison Township Municipal Landfill access road and adjacent to the Raritan River. Three pits of black, oily leachate have developed at the southeastern edge of Kin-Buc I and are known as Pits A, B, and C. Adjacent to the pits is an impounded area of tidally affected water referred to as Pool C. A fenced storage area currently utilized as part of an on-going removal action is next to Pool C. Marsh land to the east of Pool C is cut by numerous mosquito drainage channels, with its major drainage feature being Edmonds Creek, a tidally affected shallow stream that flows into the Raritan River to the south of Kin-Buc I. Pool C is connected to Edmonds Creek by a small channel. Mill Brook, located northwest of the Site, flows into Martins Creek, which has been partially filled in by Kin-Buc II. Flowing west, Martins Creek runs into the Raritan River just north of Mound B.

3. EPA has determined that the Site shall be remediated in operable units. Operable Unit I addresses source control measures for the Site. Operable Unit II addresses on-site or off-site impacts, including any soil, groundwater, or aquifer contamination, resulting from contaminant migration at or from the Site.

4. In September 1988, EPA issued a Record of Decision selecting a remedy for Operable Unit I (hereinafter "Operable Unit I ROD") which is attached hereto as Appendix A and incorporated by reference as if fully set forth herein.

5. Oily phase leachate containing polychlorinated biphenyls ("PCBs") has migrated from Kin-Buc I into the refuse in the low lying area between Kin-Buc I and the Edison Landfill, and flow patterns indicate the potential for the continued migration of this leachate toward the marsh area to the east and to the Raritan River west of the Site.

6. Pool C is the source of PCB contamination found in the sediments of Edmonds Creek, and the primary source of contamination in Pool C is Kin-Buc I. Leachate at the Site can be separated into two phases: an oily phase and an aqueous phase. Sampling and analysis of these two phases of leachate indicate that the oily phase leachate is contaminated with PCBs (up to 5,822 parts per million ("ppm")), and the aqueous phase contains hazardous substances including, but not limited to, metals, volatile organics, base neutral compounds, acid extractable compounds, PCBs, pesticides, and cyanide.

7. There are five stratigraphic units of concern at the Site: the first unit is the solid waste/fill material of the landfill itself; the second is the meadow marsh mat which immediately underlies the southern two-thirds of Kin-Buc I; and third is the sand and gravel layer which lies under the meadow marsh mat and

also underlies the southern two-thirds of Kin-Buc I. Finally, two bedrock formations lie below the sand and gravel layer. Only the sand and gravel and the bedrock formations are considered aquifers.

8. Contaminant concentration ranges developed from 84 samples taken between 1976 and 1984 from the sand and gravel aquifer reveal the following:

a. the presence of heavy metals including, but not limited to, lead (up to 2.7 ppm), chromium (up to 0.64 ppm), and zinc (up to 137 ppm); and

b. the presence of 39 organic priority pollutants including, but not limited to benzene, chlorobenzene, 4-methyl-2-pentanone, phenol, and toluene which were detected at concentrations greater than 10 ppm; other compounds detected include but are not limited to vinyl chloride (up to 190 parts per billion or "ppb"), tetrachloroethene (up to 1.8 ppm), and 1,2-trans-dichloroethene (up to 5.4 ppm).

9. At the time of issuance of the Operable Unit I ROD, a limited number of wells had been screened in the bedrock aquifer. Comparison of the upgradient versus downgradient wells in this aquifer indicates an increase in the number and frequency of organic priority pollutants detected (i.e., two contaminants in upgradient wells versus nine contaminants in downgradient wells). Benzene, chloroethane, 1,1-dichloroethane, ethyl benzene, tetrachloroethene, toluene, and trichloroethene were detected in downgradient wells, but not detected in upgradient wells.

10. The Operable Unit I ROD states that "the nature and extent of bedrock aquifer contamination is not adequately characterized based on the data gathered to date. The nature and extent of contamination in this aquifer will be a subject of the Supplemental Remedial Investigation" (hereinafter "Operable Unit II RI/FS").

11. The health effects of some of the contaminants identified at the Site are summarized as follows:

a. Benzene is a known human carcinogen, causing leukemia in exposed individuals. Benzene also adversely affects the human blood producing system. In both humans and animals, benzene exposure is associated with chromosomal damage. Benzene is fetotoxic and causes embryoletality in experimental animals.

b. PCBs are very persistent in the natural environment and are readily bioaccumulated. PCBs are carcinogenic in rats and mice. In humans, exposure to PCBs has been associated with chloracne, impairment of liver function, minor birth abnormalities, and an increased incidence of cancer. Experimental animals exposed to

PCBs experienced an increased incidence of cancer; reproductive problems, neurobehavioral degradation; pathological changes in the liver, stomach, skin, and other organs; and suppression of immunological function.

c. Tetrachloroethene (PCE) induced liver tumors when administered orally to mice and was found to be mutagenic using a microbial assay system. Reproduction toxicity was observed in pregnant rats and mice when exposed to high concentrations. Animals exposed by inhalation to PCE exhibited liver, kidney, and central nervous system damage.

d. Trichloroethene (TCE) induced hepatocellular carcinomas in mice and was mutagenic when tested using several microbial assay systems. Chronic inhalation exposure to high concentrations caused liver, kidney, and neural damage and dermatological reactions in animals.

e. Vinyl chloride is a human carcinogen that causes angiosarcomas of the liver and tumors of the brain, lung, and hemolymphopoietic system. Chronic human exposure to vinyl chloride is associated with multiple systemic disorders, including a sclerotic syndrome, acro-osteolysis, and liver damage. Chronic exposure by animals can result in lesions of the liver, kidneys, spleen, and lungs.

12. Chromium, benzene, PCBs, tetrachloroethene, 1,1-dichloroethane, trichloroethene, ethylbenzene, vinyl chloride, and toluene are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

13. The potential exists for future migration of hazardous substances from the Site into Edmonds Creek, Mill Brook/Martins Creek, the Raritan River, and into the soil, groundwater and aquifers at, adjacent to and beneath the Site.

14. Potential pathways of exposure to hazardous substances at the Site by human or other receptors include soil ingestion, surface and groundwater ingestion, and consumption of biota due to bioaccumulation of Site contaminants. Exposure to such hazardous substances may lead to the adverse health effects listed above.

15. In order to fully determine the nature and extent of contamination at the Site and to evaluate appropriate remedial alternatives for the Second Operable Unit at the Site, EPA has determined that a Remedial Investigation and Feasibility Study for Operable Unit II ("Operable Unit II RI/FS") must be conducted in conformance with CERCLA, including but not limited to Sections 104 and 121, 42 U.S.C. §9604 and §9621, and the National Oil and Hazardous Substance Pollution Contingency Plan ("National Contingency Plan" or "NCP"), 40 CFR Part 300 et seq., and amendments thereto.

16. A response action of the type contemplated by the NCP is required for the First Operable Unit at the Site to prevent and/or mitigate the actual or potential threat of harm to human health or welfare or the environment caused by the release and threatened release of hazardous substances from the Site. A remedial alternative for response action to address source control at the Site has been selected and documented in the Operable Unit I ROD.

17. On or about February 20, 1989, Respondents submitted through their consultant, Wehran Engineering Corporation (hereinafter "Wehran" or the "consultant") the "Preliminary Draft Work Plan for the Kin-Buc Landfill Operable Unit II Remedial Investigation/Feasibility Study" (hereinafter the "February Draft RI/FS Work Plan").

18. In January 1989, Respondents submitted through Wehran the "Preliminary Draft Work Plan for Operable Unit I Remedial Design/Remedial Action" (hereinafter the "January Draft RD/RA Work Plan").

19. By letter dated February 24, 1989, EPA transmitted comments concerning the January Draft RD/RA Work Plan to Respondents and requested that the revised Work Plan incorporating EPA's comments be submitted by March 17, 1989.

20. By letter dated March 29, 1989 EPA transmitted comments concerning the February Draft RI/FS Work Plan to Respondents. EPA requested the Work Plan be revised and submitted by April 14, 1989.

21. At a meeting on April 4, 1989, Respondents agreed to submit the following documents: the Operable Unit I Revised RD/RA Work Plan, to be submitted by April 14, 1989; the Operable Unit II Revised RI/FS Work Plan, to be submitted by May 1, 1989; and the Sampling & Analysis Plan (for Operable Units I and II), to be submitted by May 15, 1989.

22. On May 2, 1989 Wehran submitted the April 1989 "Draft Work Plan for Operable Unit II RI/FS" (hereinafter the "April 1989 Draft RI/FS Work Plan").

23. By letter dated June 15, 1989, EPA transmitted comments concerning the April 1989 Draft RI/FS Work Plan and requested a revised Work Plan incorporating EPA's comments be submitted.

24. By letter dated July 14, 1989, Wehran submitted a Revised Work Plan for the Operable Unit II RI/FS (hereinafter "July 1989 Draft RI/FS Work Plan").

25. By letter dated September 22, 1989, EPA approved the July 1989 Draft Work Plan, subject to certain revisions and conditions specified in that letter. Such revisions included, but were not limited to, dates by which the Draft RI Report and the Draft FS Report for Operable Unit II were to be submitted. By that letter, EPA requested that the Draft FS Report be submitted within twelve weeks of the date the Draft RI Report was due.

26. By letter dated October 31, 1989, EPA approved Respondents' proposal to submit the Draft FS Report within seventeen weeks following the date the Draft RI Report is to be submitted to EPA.

27. Respondents prepared and submitted through Wehran the "Final Work Plan for Kin-Buc Landfill Operable Unit II Remedial Investigation and Feasibility Study" by letter dated October 20, 1989 (hereinafter the "Final Operable Unit II RI/FS Work Plan" or "RI/FS Work Plan"). Certain amendments to the schedule contained in the RI/FS Work Plan were later made by EPA at the request of Respondents. The RI/FS Work Plan, as amended, is hereby incorporated by reference as if fully set forth herein.

28. By letter dated June 29, 1989, Wehran submitted on behalf of Respondents the "Draft Sampling and Analysis Plan for Operable Unit II Remedial Investigation/Feasibility Study and Operable Unit I Remedial Design/Remedial Action" (hereinafter "Draft SAP").

29. By letter dated August 18, 1989, EPA transmitted comments concerning the Draft SAP.

30. By letter dated September 22, 1989, Wehran submitted to EPA the "Draft Sampling and Analysis Plan for Kin-Buc Landfill Operable Unit II Remedial Investigation/Feasibility Study and Operable Unit I Remedial Design/Remedial Action, June 1989 (Revised September 1989)" (hereinafter "September Draft SAP").

31. By letter dated October 24, 1989, EPA approved the September 1989 Draft SAP subject to certain revisions and conditions as specified in that letter.

32. By letter dated December 1, 1989, Respondents submitted through Wehran the Final Sampling and Analysis Plan (hereinafter the "Final SAP" or "SAP"). The SAP is hereby incorporated by reference as if fully set forth herein.

33. On April 13, 1989, Wehran submitted on behalf of Respondents the "Preliminary Draft Work Plan for Operable Unit I RD/RA" (hereinafter "April Draft RD/RA Work Plan").

34. On May 18, 1989, EPA transmitted comments concerning the April Draft RD/RA Work Plan. By that letter, EPA required that Respondents revise certain portions of the work plan in

accordance with EPA's comments and submit them with a cover letter to EPA for review. EPA's letter further stated that, following its review, EPA would approve the plan with the appropriate changes, at which time Respondents would be required to submit a Final RD/RA Work Plan to EPA, incorporating all changes required by EPA.

35. In June 1989, Wehran submitted on behalf of Respondents the "Draft Work Plan for Operable Unit I RD/RA (hereinafter the "June Draft RD/RA Work Plan").

36. On August 30, 1989, EPA met with Respondents and Wehran to discuss the schedule contained in the June Draft RD/RA Work Plan. As a result of that meeting, on September 18, 1989, Respondents submitted through Wehran a revised schedule detailing the completion of RD/RA activities. As noted in Wehran's cover letter, the schedule reflected the revisions discussed and agreed to during the August 30, 1989 meeting and constituted a revision to the June Draft RD/RA Work Plan.

37. By letter dated March 5, 1990, EPA transmitted approval of the June Draft RD/RA Work Plan, as revised by Wehran by letters dated October 26, 1989 and January 20, 1990.

38. Respondents prepared and submitted through Wehran the "Final Work Plan for Kin-Buc Landfill Operable Unit I Remedial Action/Remedial Design" in March 1990 (hereinafter the "Final Operable Unit I RD/RA Work Plan" or "RD/RA Work Plan"). The RD/RA Work Plan is hereby incorporated by reference as if fully set forth herein.

39. Respondents either failed to submit or submitted excessively late, without any time extensions having been granted by EPA, a number of documents required by schedules approved by EPA or contained in the RI/FS Work Plan or the RD/RA Work Plan, including those listed in paragraphs 40 through 51, below.

40. The "Subsurface Investigation Along Clay Cut-Off Wall Alignment," due on November 1, 1989, was not submitted by Respondents until July 16, 1990.

41. The report addressing the task to "Evaluate the Suitability of On-Site Clay for Cap Material," due on December 15, 1989, was not submitted by Respondents until July 16, 1990.

42. The report addressing the task to "Evaluate the Areal Extent of Contamination to Select the Horizontal Wall Alignment," due on June 15, 1990, was not submitted by Respondents until August 9, 1990.

43. The report addressing the task to "Evaluate Pumping Requirements for Sand and Gravel Aquifer," due on May 15, 1990, has never been submitted by Respondents.
44. The report addressing the task to "Refine Aqueous and Oil Collection Estimates," due on July 1, 1990, has never been submitted by Respondents.
45. The report addressing the task to "Evaluate the Integrity of the Existing Kin-Buc I Final Cover/Cap," due on January 15, 1990, has never been submitted by Respondents.
46. The report addressing the task to "Determine Location of On-Site Treatment Facility," due on May 15, 1990, has never been submitted by Respondents.
47. The report addressing the task to "Evaluate Alternatives and Prepare Plan for Treatability Study," due on August 1, 1990, has never been submitted by Respondents.
48. The report addressing the task to "Assess the Potential Impact to Wetlands from Remedial Construction," due on May 15, 1990, has never been submitted by Respondents.
49. The Clay Cut-Off Wall Remedial Design Preliminary Construction Plans and Specifications, due on October 15, 1989, has never been submitted by Respondents.
50. The "Description of Current Situation and Remedial Action Objectives" (Chapter 1 of the FS), due on August 31, 1990, has never been submitted by Respondents.
51. The Draft Remedial Investigation Report, due on August 31, 1990, has never been submitted by Respondents.

V. CONCLUSIONS

- A. The Site is a "facility" within the meaning of that term as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
- B. Many of the chemicals and substances referred to in the FINDINGS section, above, which are located at or migrating from the Site are "hazardous substances" within the meaning of that term as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- C. The presence of hazardous substances at the Site and the migration of hazardous substances at or from the Site, as described in the FINDINGS, above, are "releases" of a hazardous substance within the meaning of Sections 101(22) and 104(a) of CERCLA, 42 U.S.C. Sections 9601(22) and 9604(a). Each such

release of each hazardous substance at and from the Site is also an "actual...release of a hazardous substance from a facility" as that phrase is used in Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

D. The actual or potential migration of hazardous substances at or from the Site into Edmonds Creek, Mill Brook/Martins Creek, the Raritan River, and into the soils, groundwater, and aquifers at, adjacent to, or beneath the Site, as described in the FINDINGS, above, constitutes a "threatened release of a hazardous substance from a facility" within the meaning of Section 101(22) and 106(a) of CERCLA, 42 U.S.C. Sections 9601(22) and 9606(a). Each such actual or potential migration of a hazardous substance at or from the Site also constitutes a "substantial threat" of a release of a hazardous substance into the environment, within the meaning of Section 104(a)(1)(A) of CERCLA, 42 U.S.C. Section 9604(a)(1)(A).

E. Each and every Respondent to this ORDER is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

F. Each and every Respondent to this ORDER is jointly and severally liable, under one or more subsections of Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for all EPA response costs incurred by the Federal government relating to the Site.

VI. DETERMINATIONS

A. Based upon the FINDINGS set forth above, EPA has determined that the release and threatened release of hazardous substances into the environment at and from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

B. Response actions of the types contemplated by the NCP, 40 C.F.R. Part 300, Subpart E, are required at the Site to fully determine the nature and extent of contamination at and from the Site and to prevent or mitigate any actual or potential threat of harm to human health or welfare or the environment caused by the release and threatened release of hazardous substances at and from the Site.

C. The response actions described in and which are the subject of the Final Operable Unit I RD/RA Work Plan and the Final Operable Unit II RI/FS Work Plan (both incorporated herein by reference) are cost effective and are consistent with achieving a permanent remedy at the Site.

VII. ORDER

Based on the foregoing FINDINGS, CONCLUSIONS and DETERMINATIONS, it is hereby ordered that each and every Respondent identified in the caption of this ORDER undertake response actions at the Site in accord with all of the terms, provisions and schedules stated below. It is hereby ordered that Respondents shall undertake a Remedial Investigation and Feasibility Study ("RI/FS") for Operable Unit II and Remedial Design and Remedial Action ("RD/RA") for Operable Unit I with respect to the Site in accordance with the requirements set forth below. All activities required by this ORDER shall be completed as soon as possible even though maximum time periods for their completion are set forth in Attachments A and B to this ORDER.

A. Facility Coordinator and EPA Remedial Project Manager.

1. A qualified Facility Coordinator, designated by Respondents, shall be available for contact by EPA throughout all phases of the work required by this ORDER and until all the actions required by this ORDER are completed.
2. The Facility Coordinator shall be responsible for oversight of the implementation of this ORDER, including all activities required herein. The Facility Coordinator shall also be the primary contact person for communications with EPA and DEP technical personnel. All communications transmitted by EPA to the Facility Coordinator shall be deemed received by and shall be deemed to be notice to all of the Respondents who perform the actions required by this ORDER. Copies of all correspondence and writings from the Respondents to EPA shall also be directed to the Facility Coordinator.
3. The Respondents shall submit the name, title, address, and telephone number of the Facility Coordinator and a description of his or her professional experience and qualifications for this position in writing to the EPA Project Manager for the Site and the state contact identified below within ten calendar (10) days of the effective date of this ORDER. The Facility Coordinator shall have sufficient technical and managerial expertise and qualifications to adequately oversee and manage all aspects of the work contemplated by this ORDER. The Facility Coordinator shall not be an attorney nor shall he or she be a counsel for any or all of the Respondents.
4. EPA reserves the right to reject any Facility Coordinator proposed by the Respondents if it judges him or her to be unqualified for that position. In that event, the Respondents shall submit to EPA the name and qualifications of a new Facility Coordinator within ten (10) calendar days of EPA's notice of rejection of Respondents' Facility Coordinator.

5. EPA has the unreviewable right to select, and, at any time, to change, a Remedial Project Manager ("RPM") for the Site. If EPA changes its RPM, EPA will inform Respondents in writing of the name, business address, and telephone number of the new RPM. EPA's RPM is Kimberly O'Connell, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 747, New York, New York 10278; telephone: (212) 264-8127.

6. EPA's RPM shall have all the authority vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. EPA's RPM shall have the authority, consistent with the NCP, to halt any work required by or performed pursuant to this ORDER, and to take or direct any necessary response action.

B. Written Commitment to Comply

1. Within ten (10) calendar days of the effective date of this ORDER, Respondents shall submit to EPA a signed, unconditional and unequivocal written commitment to comply with and to perform all of the work required under this ORDER, including implementation of all components of the Operable Unit I RD/RA and the Operable Unit II RI/FS in accordance with the schedules set forth in this ORDER and any and all attachments or amendments thereto.

2. Such written commitment shall contain, in addition, the following:

a. The names, addresses and telephone numbers of all general contractors, subcontractors and all other major contractors who will be performing work at the Site pursuant to the terms of this ORDER, to the extent they are known as of the date the commitment is sent to EPA, and an identification of the tasks that each will be performing at the Site;

b. A Health and Safety Plan which is in accord with all applicable federal regulations;

c. The curriculum vitae of all non-attorney professionals who will be performing work for the Respondents under this ORDER, including all professional engineers, geologists, soil and foundation specialists, architects, civil engineers and design engineers;

d. A commitment by Respondents to obtain a performance bond or provide other financial assurance in accordance with 40 C.F.R. §264.143 and acceptable to EPA, which shall be adequate to ensure that all of the response actions required by this ORDER will be satisfactorily completed in the event of any default in

performance by any or all of the Respondents. Such performance bond or financial assurance shall be provided to EPA within thirty (30) calendar days of the effective date of this ORDER.

3. If Respondents fail or refuse to unequivocally and unconditionally commit to comply with this ORDER as specified in this provision, Respondents shall be deemed to be in violation of this provision of this ORDER for such failure or refusal, and to be subject to penalties pursuant to Section 106(b) of CERCLA for each day thereafter that Respondents continue to violate this provision, in addition to penalties for noncompliance with any other provision of this ORDER and liability for treble damages pursuant to Section 107(c) of CERCLA.

C. Implementation of RD/RA Work Plan.

1. The Respondents shall implement the work specified in the RD/RA Work Plan. The RD/RA Work Plan shall be deemed incorporated into and made an enforceable part of this ORDER. All work shall be conducted in accordance with the National Contingency Plan, the EPA Superfund Remedial Design and Remedial Action Guidance, the Final SAP, and other applicable guidance or guidelines, and the requirements of this ORDER, including the standards and specifications contained in the RD/RA Work Plan, and the schedules contained in Attachment A to this ORDER, which is hereby incorporated as if fully set forth herein. All documents, reports or other deliverables past due in accordance with schedules contained in the RD/RA Work Plan which have not been submitted to EPA by the effective date of this ORDER, shall be submitted to EPA by Respondents within fifteen (15) days of the effective date of this ORDER.

2. Within thirty (30) days of completion of all construction components of the Operable Unit I Remedial Action, the Respondents shall submit to EPA the "as built" engineering drawings which depict all of the facilities and systems constructed under this ORDER.

3. Within sixty (60) days of completion of construction, the Respondents shall submit a Draft Remedial Action Report to EPA which includes a Notice of Completion by the Respondents that all components of the Operable Unit I Remedial Action (except for operation and maintenance and long-term monitoring) have been completed in compliance with the terms set forth in the Final Operable Unit I RD/RA Work Plan, the Final Design, and this ORDER.

4. The Draft Remedial Action Report submitted to EPA by the Respondents shall also include, but shall not necessarily be limited to, the following:

- a. Verification that all remedial equipment has been dismantled and removed from the Site;
 - b. The results of all verification sampling and analysis to document that the Site has been remediated according to the specifications in the Final Design, the ROD, and this ORDER;
 - c. Verification that the Site has been graded and revegetated according to the specifications in the Final Operable Unit I RD/RA Work Plan; and
 - d. Documentation that all other terms or specifications contained in the Final Design have been conducted satisfactorily in accordance with the ROD and this ORDER.
5. EPA will review the Draft Remedial Action Report in accordance with the submissions review procedures of this ORDER.

D. Performance of the RI/FS

1. Respondents shall perform the Operable Unit II RI/FS in conformance with the RI/FS Work Plan, the Final SAP, the National Contingency Plan, the EPA Superfund Remedial Investigation and Feasibility Study Guidance, and other applicable guidance or guidelines, and the schedules contained in Attachment B to this ORDER, which is hereby incorporated as if fully set forth herein. The RI/FS Work Plan shall be deemed incorporated into and made an enforceable part of this ORDER. All documents, reports or other deliverables past due in accordance with the schedules contained in the RI/FS Work Plan which have not been submitted to EPA by the effective date of this ORDER, shall be submitted to EPA by Respondents within fifteen (15) days of the effective date of this ORDER.
2. Respondents shall complete all activities specified in the approved Final SAP and, in conformance with the schedule contained in Attachment B hereto, shall submit to EPA for review and approval a draft report detailing the results of the RI ("Draft RI Report").
3. EPA will review the Draft RI Report in accordance with the submissions review procedures set forth in this ORDER.
4. In accordance with the schedule contained in Attachment B, hereto, Respondents shall submit to EPA for review an FS report ("Draft FS Report") which shall include a recommended remedial alternative and a conceptual design of that alternative.
5. EPA will review the Draft FS Report in accordance with the submissions review procedures set forth in this ORDER.

6. Following its approval or approval with unilateral modifications of the Draft Final RI Report and Draft Final FS Report, EPA will announce the availability of the reports to the public for review and comment. Following the public comment period (which may involve both written and oral comments), EPA will determine if the Final Draft RI Report and/or the Final Draft FS Report should be approved, disapproved, or modified, and will notify Respondents in writing of EPA's determination. In the event that EPA determines that either or both of the reports needs to be modified, EPA may either modify the report(s) unilaterally or request in writing that Respondents make such modifications. If EPA requests that Respondents make such modifications, within thirty (30) calendar days of receipt of EPA's notification, Respondents shall modify the report(s) as directed by EPA and shall submit the modified documents to EPA. Failure to do so shall be deemed a violation of this ORDER. Upon approval or unilateral modification by EPA, the modified documents shall be deemed the Final RI Report and the Final FS Report. EPA shall remain the final arbiter in any dispute regarding the sufficiency or acceptability of both the Final RI Report and Final FS Reports.

7. The Draft FS Report, Final Draft FS Report, and the Final FS Report shall not select a remedial alternative. EPA will make the final selection of the remedial alternative(s) to be implemented with respect to the Site.

E. Public Participation.

Respondents shall cooperate with EPA in providing information regarding the work to be performed pursuant to this ORDER to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

VIII. GENERAL PROVISIONS

A. Access, Document Availability, and Retention of Records.

1. Copies of all work plans, reports and any other documents required to be submitted to EPA under this ORDER shall be sent by certified mail or express mail to the following addresses:

four (4) copies: U. S. Environmental Protection Agency
Emergency and Remedial Response Division
New Jersey Compliance Branch
26 Federal Plaza
New York, New York 10278
Attn.: Project Manager - Kin-Buc Site

three (3) copies: Chief, Bureau of Federal Case Management
 Division of Hazardous Waste Management
 N.J. Department of Environmental Protection
 CN 028
 401 East State Street-Floor 5
 Trenton, New Jersey 08625
 Attn.: Case Manager - Kin-Buc Site

2. All documents produced by the Respondents and submitted to EPA or DEP in the course of implementing this ORDER shall be available to the public unless Respondents claim they are confidential using the procedures described in 40 C.F.R. Part 2. If such a claim is made with regard to any of the records or any other documents produced by the Respondents or their contractors, EPA will release such documents in accordance with the procedures stated in 40 C.F.R Part 2, Subpart B and Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7). No sampling, hydrological, geological, soil chemical analyses, groundwater quality data, or information specified under Section 104(e)(7)(F)(i)-(viii) of CERCLA, relating to the Site shall be considered confidential.

3. The Respondents shall allow EPA and EPA contractors and agents to have access to all records relating to implementation of the work under this ORDER. All such records shall be stored at a location in the State of New Jersey which is accessible to EPA officials. The Respondents shall make all such records available for any EPA or DEP official to review and copy within three days after receiving a request from EPA or DEP for access to such records. All employees and contractors of the Respondents who engage in any activity under this ORDER shall be available to and shall cooperate with EPA and EPA agents and contractors.

4. All data and information relating to the implementation of this ORDER shall be retained by Respondents for a period of ten (10) years after the effective date of this ORDER. The Respondents shall inform the EPA Project Manager and DEP contact in writing within ten (10) days of the effective date of this Order of the name and address of the person who will be charged with retaining these records and where they will be located during this ten (10) year period. Any and all such records are to be made available to EPA upon request during any business day throughout that period of time.

5. The Respondents shall allow unimpeded access to all areas of the Site and into all structures thereon by all EPA and DEP representatives, agents, contractors and consultants. The Respondents shall permit such EPA and DEP agents to enter and move about the Site at will at all times and shall allow such officials or agents of EPA or DEP to undertake any observations, response actions or any other activities which EPA or DEP elects

to undertake at the Site at its option, including but not limited to the following:

- a. Monitoring the progress of activities taking place;
- b. Verifying any data or information submitted to EPA or DEP;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples at the Site; and
- e. Inspecting and copying records, operating logs, contracts, or other documents required to assess the Respondents' compliance with this ORDER.

6. Respondents shall make available to EPA and DEP as promptly as reasonably possible, the results of all sampling and/or tests or other data generated by Respondents with respect to the implementation of this ORDER.

7. At the request of EPA or DEP, the Respondents shall provide split or duplicate samples to EPA and DEP or allow split or duplicate samples to be taken by EPA or DEP or their authorized representatives of any samples collected by Respondents pursuant to the implementation of this ORDER. Respondents shall notify EPA and DEP not less than ten (10) days in advance of any sample collection activity. In addition, EPA and DEP representatives shall have the right to take any additional samples that they deem necessary.

8. Nothing in this ORDER shall be construed to limit EPA's or DEP's rights of access or rights to obtain information pursuant to applicable law.

9. The Respondents shall use their best efforts to obtain all access agreements which are needed to implement the terms of this ORDER. If, despite such best efforts, the Respondents cannot obtain any particular access agreement or access which is required for implementation of the terms of this ORDER, the Respondents shall so notify the EPA Project Manager in writing and shall specify the real property in question and the efforts which the Respondents have taken to obtain entry onto the property in question. If EPA determines that access onto any such property is needed to implement any of the terms of this ORDER and that Respondents have used their best efforts to obtain such access to no avail, EPA in its sole discretion may make reasonable efforts to facilitate access by the Respondents to that property. In that event, the Respondents shall continue to implement all terms of this ORDER which, in the view of EPA, can still be implemented regardless of any failure to obtain access to any property. However, failure of Respondents to gain access

shall not be construed as excusing performance by the Respondents of any of their obligations under this ORDER.

B. EPA Review of Submissions.

1. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this ORDER, EPA may: (a) approve the submission; (b) approve the submission with modifications made unilaterally by EPA; (c) disapprove the submission and direct Respondents to re-submit the document after modifying the document in accord with EPA's comments and as directed by EPA; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. In the event of EPA disapproval pursuant to subsection (d), above, Respondents shall be deemed to be in violation of the relevant provisions of this ORDER for failure to make an adequate submission beginning on the day following the date the deliverable, plan, report or other item is due and on each and every day thereafter.

2. In the event of approval or approval with unilateral modifications by EPA of any submission or re-submission pursuant to this Section VIII.B, EPA will notify Respondents of such approval or approval with modifications, and the submission or re-submission shall be deemed final and effective the date EPA's notice of approval is signed. Following receipt of EPA's notice of approval, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA. EPA shall remain the final arbiter in any dispute regarding the sufficiency or acceptability of any such plan, report or other item, and EPA may modify it unilaterally at any time by notifying Respondents of such modification.

3. In the event that EPA disapproves any submission and directs Respondents to re-submit such submission with modifications pursuant to Paragraph B.1(c), above, Respondents shall modify the submission in accord with EPA's comments and as directed by EPA, and shall submit the modified document to EPA within fifteen (15) calendar days of receipt of EPA's comments or within such other time period as EPA may specify in writing. Failure to make a timely and conforming re-submission in compliance with this Paragraph shall constitute a separate violation of this ORDER for each day such re-submission is late or remains deficient.

4. EPA may approve, approve with unilateral modifications, disapprove with a requirement for further modification, or disapprove any re-submission made pursuant to Paragraph B.3, above, in accordance with the procedures of this Section VIII.B, except that any EPA action in approving with unilateral modifications, disapproving, or disapproving with a requirement for further modification any such re-submission shall under no

circumstances be construed as relieving Respondents of liability for daily penalties and treble damages for failure to make a timely and conforming first re-submission pursuant to Paragraph B.3, above. Each subsequent late or deficient re-submission shall constitute a separate violation of Paragraph B.3, above.

5. EPA's comments pursuant to Paragraph B.1(c) and B.3, above, may require Respondents to perform such additional investigatory work, verification sampling, evaluations, or other response action as EPA may find necessary. Any such additional investigatory work or other response action, including any necessary work plans and reports, shall be performed by Respondents as directed by EPA and in accordance with any schedules specified by EPA. A requirement by EPA for additional investigatory work or other response action pursuant to this paragraph shall not excuse performance of any other obligation under this Section VIII.B and shall not be construed to alter in any way Respondents' obligations to make timely and conforming re-submissions pursuant to Paragraph B.3, above.

C. Amendments and Scope of Order Generally.

1. All reports, the SAP, EPA-approved Work Plans and other writings or amendments required under the terms of this ORDER shall, upon approval by EPA, be deemed incorporated into this ORDER and may be enforced as any other provision in this ORDER.
2. No informal advice, guidance, suggestions or comments by EPA or DEP officials shall be construed to relieve Respondents of any of their obligations under this ORDER.
3. Any and all modifications to this ORDER, approvals or disapprovals of submissions, or other communications from EPA to Respondents required by this ORDER, must be in writing and signed by the Chief, New Jersey Compliance Branch, Emergency and Remedial Response Division, U.S. EPA, Region II.
 - a. EPA shall have sole authority to make any modifications to the Final Operable Unit I RD/RA Work Plan and the Final Operable Unit II RI/FS Work Plan and any work plans or schedules submitted pursuant thereto, and EPA may unilaterally make any such modifications at any time prior to the completion of all work required by this ORDER.
 - b. EPA alone shall be the final arbiter of all issues and disputes concerning: i) any work plan, or other plan, deliverable or schedule which EPA approves or which the Respondents propose under the terms of this ORDER, and ii) all work which shall be required or performed under this ORDER or under any work plan, or other document which EPA approves pursuant to the terms of this ORDER.

D. Insurance and indemnification

All contractors and subcontractors the Respondents use for work at the Site must have adequate liability coverage or must be indemnified by the Respondents for any and all liability which may result from any activities at the Site pursuant to this ORDER.

E. Professional Standards, Permits and Compliance with other Laws

1. All work conducted pursuant to this ORDER shall be performed in accordance with prevailing professional standards.
2. All activities carried out by Respondents pursuant to this ORDER shall be done in accordance with all applicable federal, state and local laws, regulations, ordinances and other requirements.
3. All activities conducted by Respondents pursuant to this ORDER shall comply with the requirements of CERCLA, the NCP, and all applicable OSHA regulations for worker health and safety as found in 29 C.F.R. §1910 et seq., and elsewhere.
4. All materials removed from the Site shall be disposed of or treated at a facility approved by EPA's RPM and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3), with the EPA "Revised Off-Site Policy," OSWER Directive 9834.11 (November 13, 1987) and/or any subsequent final EPA "off-site" guidance or policy documents, and with all other applicable federal, state and local requirements. All disposal of materials conducted by the Respondents pursuant to performing any work under this ORDER shall comply with all provisions of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601 et seq., all regulations promulgated pursuant to both RCRA and TSCA, and all applicable state laws and regulations.
5. Respondents shall be responsible for obtaining all necessary federal, state and local permits, licenses and other governmental and private authorizations, including access agreements, needed to carry out the work required by this ORDER.

F. United States not Liable.

The United States Government and any and all agencies thereof shall not be liable for any injury or damage to any person or property resulting from any acts or omissions of any of the

Respondents and any employees, contractors, or agents of the Respondents while performing any activity related to this ORDER; the United States Government and any and all agencies thereof shall not be a party to any contract entered into by Respondents in carrying out any activity pursuant to this ORDER, and the Respondents shall not represent to anyone that the United States Government or any agency thereof is or may be a party to any such contract.

G. Noncompliance

1. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this ORDER.

2. Any failure by Respondents to carry out any terms of this ORDER may result in EPA unilaterally taking or funding the actions required under this ORDER, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

3. Any failure by Respondents to comply with any provision in this ORDER or any provision or schedule in any work plan or other document incorporated by reference or attached to this ORDER, including failure of any Respondent to cooperate with or assist any other Respondent in carrying out its obligations under this ORDER, shall be considered a violation of this ORDER.

4. If the Respondents violate any provisions of this ORDER, EPA may elect to:

a. Demand that the Respondents cease work at the Site; and/or

b. Use federal funds to complete the work required by this ORDER; and/or

c. Initiate an action against any or all of the Respondents under Sections 106(b), 107(a) and/or 107(c) of CERCLA, 42 U.S.C. §§9606(b), 9607(a), and/or 9607(c), respectively; and/or

d. Take any other actions authorized under federal laws or regulations.

5. Nothing stated in this ORDER shall preclude EPA from taking any additional enforcement actions, and/or any actions as it may deem necessary for any purpose, including the prevention or abatement of an imminent and substantial endangerment to the public health or welfare or the environment arising at or in the vicinity of the Site.

6. If EPA incurs any response costs as a result of the failure of the Respondents to comply with any schedules, terms or provisions of this ORDER, the Respondents shall be liable pursuant to §107(c) of CERCLA for treble damages for each and every dollar in response costs incurred by EPA as result of such failure to comply.

7. If the Respondents fail to comply with any of the provisions or schedules set forth in this ORDER each Respondent named in this ORDER shall be liable pursuant to §106(b) of CERCLA for a penalty of up to \$25,000 per day for each and every day of each violation of each provision of this ORDER in addition to the treble damages liability stated in Paragraph 6, above.

8. If Respondents fail to fully implement and satisfactorily complete all of the work set forth in this ORDER and in all EPA approved workplans and schedules attached hereto or incorporated herein on or before the date specified for such completion pursuant to this ORDER, each Respondent named in this ORDER shall be liable for a penalty of up to \$25,000 per day for such failure pursuant to §106(b) of CERCLA for each and every day after that date until all such work is completed by the Respondents to EPA's satisfaction.

H. Reservations of Rights

1. Nothing contained in this ORDER shall affect the right of EPA to initiate an action for civil penalties against any entity, including any of the Respondents, pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b).

2. Nothing contained in this ORDER shall affect the right of EPA to pursue an action against any entity, including any one or more of the Respondents (or any other responsible party), pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for recovery of any costs incurred by EPA relating to this ORDER and/or for any other response costs which have been incurred or will be incurred by the United States relating to the Site.

3. Nothing contained in this ORDER shall affect the right of EPA to enter into any Consent Decree, to issue any Consent Order or to issue any other Orders unilaterally to any or all of the Respondents (or to any other responsible parties for the Site) pursuant to CERCLA, or to initiate a judicial action to require the performance of any additional response actions which EPA determines are necessary for the Site.

4. Nothing contained in this ORDER shall act as a bar to, a release of, a satisfaction of, or a waiver of any claim or cause of action which EPA has at present or which EPA may have in the

future against any entity, including any or all of the Respondents, on any matters relating to the Site.

5. Nothing contained in this ORDER shall be construed to mean that the Respondents are the only potentially responsible parties with respect to the release and threatened release of hazardous substances at the Site.

6. Nothing contained in this ORDER shall affect any right, claim, interest, defense, or cause of action of EPA or the Respondents with respect to any entity which is not a party to this ORDER. Nothing in this ORDER constitutes a decision by EPA on pre-authorization or on any approval of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

7. This ORDER and all EPA-approved work plans, specifications, and other documents approved by EPA, prepared in compliance herewith, shall be enforceable pursuant to Sections 106(b) and 113(b) of CERCLA, 42 U.S.C. §9606(b) and §9613(b), respectively.

8. Nothing contained in this ORDER shall preclude the State of New Jersey or any agency or department thereof from taking or maintaining any enforcement action or litigation relating to the Site, including issuing any directive pursuant to State law relating to the Site.

I. Notification and Reporting Requirements.

1. Respondents shall provide monthly progress reports to EPA and DEP as provided herein by the tenth (10th) day of every month following the effective date of this ORDER. At a minimum, the progress reports shall: (1) describe all activities undertaken by the Respondents pursuant to the terms of this ORDER during the month immediately preceding the date of submission of the report; (2) identify all activities which will be undertaken by the Respondents in the next month in order to comply with all terms of this ORDER; (3) identify potential delays, if any, which the Respondents foresee in completing the work required by this ORDER; (4) include all the results of sampling and tests and all other data received by Respondents in the preceding month; and (5) provide a quantified estimate of the percentage of work which is required by the ORDER which has been completed as of the date of submission of the progress report to EPA.

2. Upon the completion of all of the work required by this ORDER, the Facility Coordinator designated by the Respondents shall notify the EPA Project Manager and the state contact in writing by registered mail that all of the work required by this ORDER has been completed.

J. EPA Periodic Review.

Under Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and any applicable regulations promulgated thereunder, EPA may review the Site to assure that the work performed pursuant to this ORDER adequately protects human health and the environment. Until such time as EPA certifies completion of the work performed pursuant to this ORDER for which such certification is appropriate, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct reviews under Section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional response actions or to modify work previously performed or to be performed pursuant to this ORDER.

K. Additional Response Action.

EPA may determine at any time that in addition to the response action required by this ORDER and all attachments hereto or documents incorporated herein by reference, additional response action, including but not limited to additional investigatory work or additional response action (whether or not identified during the review process under Section 121(c) of CERCLA), is necessary to meet relevant performance standards, protect human health or the environment, or determine the nature and extent of contamination related to the Site. At such time as EPA makes such a determination, EPA may notify the Respondents. Respondents shall submit to EPA a written, unequivocal and unconditional commitment to perform such additional response action within seven (7) calendar days after receipt of EPA's notice of the necessity for additional response action. Within thirty (30) calendar days of receipt of EPA's notice or within such other time period as EPA may specify, the Respondents shall submit a work plan, including a schedule, for performance of such additional response action. EPA will review the work plan in accordance with the procedures set forth herein for EPA review of submissions. Respondents shall implement the work plan following EPA's approval or EPA's approval with unilateral modifications in accordance with those procedures.

L. Endangerment and Emergency Response.

1. In the event of any action or occurrence during the performance of Respondents' obligations under this ORDER which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate response action to prevent, abate, or minimize the threat, and shall immediately notify EPA's Remedial Project

Manager (RPM). If EPA's RPM is not available, Respondents shall notify the Emergency Response Unit, EPA Region II.

2. Respondents shall take such response action in consultation with EPA's RPM and in accordance with all applicable provisions of this ORDER, including but not limited to the Health and Safety Plan and the Contingency Plan.

3. Nothing in this Section shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment, or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

IX. OPPORTUNITY TO CONFER

Respondents may confer with EPA to discuss this ORDER, including its applicability, the FINDINGS upon which the ORDER is based, the appropriateness of any action or activity required to be undertaken herein, or any other relevant issues or contentions which the Respondents may have with regard to this ORDER at the conference with EPA which has been scheduled as noted in the transmittal letter which accompanies this ORDER. This conference is not and shall not be deemed to be an adversary proceeding or part of a proceeding to challenge this ORDER.

X. EFFECTIVE DATE

This ORDER shall become effective on the tenth (10th) day following the date it is signed by the Regional Administrator as indicated below.

IT IS SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

~~CONSTANTINE SIDAMON-ERISTOFF~~
Regional Administrator
U.S. Environmental Protection Agency
Region II
New York, New York 10278

DATE 9/21/90

SCHEDULE FOR THE KIN-BUC LANDFILL SITE OPERABLE UNIT 1 RD/RA

1. Project Schedule for Additional Studies

TASK	REQUIREMENT
1.0 Subsurface Investigation along Clay Cut-off Wall Alignment	Report due November 1, 1989 ¹
2.0 Evaluate Pumping Requirements for Sand and Gravel Aquifer, including;	Report due 15 days after the effective date of the Order ²
2.1 Determine Existing and Potential Future Site Hydraulic Relationships	
2.2 Evaluate Existing Water Quality in the Sand and Gravel & Bedrock	
2.3 Assess the Potential Future Impact to Water Quality in the Sand and Gravel and Bedrock Units	
3.0 Evaluate the Areal Extent of Contamination to Select the Horizontal Wall Alignment	Report due June 15, 1990 ³
4.0 Refine Aqueous and Oil Collection Estimates	Report due 15 days after the effective date of the Order ²
5.0 Evaluate the Integrity of the Existing Kin-Buc I Final Cover/Cap	Report due 15 days after the effective date of the Order ²
6.0 Evaluate the Suitability of On-site Clay for Cap Material	Report due December 15, 1989 ⁴

Footnotes

1. Actual submission on July 16, 1990
2. Administrative Order Index No. II-CERCLA-00114
3. Actual submission on August 9, 1990
4. Actual submission on July 16, 1990

TASK	REQUIREMENT
7.0 Determine Location of On-site Treatment Facility, including;	Report due 15 days after the effective date of the Order ²
7.1 Siting Evaluation	
7.2 Soils Investigation	
8.0 Aqueous Treatment Evaluation, including;	
8.1 Representative Leachate Sample Collection, Analysis & Evaluation	
8.2 Evaluate Alternatives and Prepare Plan for Treatability Study	Plan due 15 days after the effective date of the Order ²
8.3 Treatability Study	
8.4 Results Evaluation and Treatment Option Selection	This Subtask is to be initiated within 7 days of EPA's approval of the Treatability Study Work Plan. The Treatability Study is to be completed within 75 days of initiation.
9.0 Assess the Potential Impact to Wetlands from Remedial Construction	This Subtask is to be completed and a report submitted to EPA within 45 days of completion of the Treatability Study
10.0 Compatibility Testing of Proposed Slurry Wall Backfill-Bentonite Materials with Landfill Leachate	Report due within 30 days of receipt of EPA's comments on the report to Determine Location of On-site Treatment Facility (Task 7.0)
	Report due January 15, 1991

Footnote

2. Administrative Order Index No. II-CERCLA-00114

TASK	REQUIREMENT
11.0 Site Reconnaissance Along the Proposed Wall Alignment	This Task is to be initiated within 15 days of receipt of EPA's comments on the Evaluation of the Areal Extent of Contamination to Select the Horizontal Wall Alignment. This Task is to be completed within 15 days of initiation.
12.0 Borings Along the Slurry Wall Alignment	This Task is to be initiated within 15 days of receipt of EPA's comments on the Evaluation of the Areal Extent of Contamination to Select the Horizontal Wall Alignment. This Task is to be completed and a report submitted to EPA within 60 days of initiation.

II. Project Schedule for Clay Cut-off Wall Remedial Design

TASK	REQUIREMENT
1.0 Preliminary Submission, including:	
1.1 Evaluation of the Results of Field Investigation	November 1, 1989 ⁵
1.2 Construction Plans and Specifications	Report due 15 days after the effective date of the Order ²
2.0 Prefinal Submission, including:	The Prefinal Submission is due within 15 days of receipt of EPA's comments on the Preliminary Submission (Task 1.0)
2.1 Construction Plans and Specifications	
2.2 Cost Estimates	
2.3 Operation & Maintenance Plan	
2.4 Quality Assurance Project Plan for Construction	
2.5 Site Safety Plan for Construction	
3.0 Final Submission, including:	The Final Submission is due within 15 days of receipt of EPA's comments on the Prefinal Submission (Task 2.0)
3.1 Construction Plans and Specifications	
3.2 Cost Estimates	
3.3 Operation & Maintenance Plan	
3.4 Quality Assurance Project Plan for Construction	
3.5 Site Safety Plan for Construction	

Footnotes

2. Administrative Order Index No. II-CERCLA-00114
5. Actual submission on August 9, 1990

II. Project Schedule for Slurry Wall Containment and Collection System Remedial Design

<u>TASK</u>	<u>REQUIREMENT</u>
1.0 Preliminary Submission - Construction Plans and Specifications	Preliminary Submission is due within 30 days of receipt of EPA's comments on the Evaluation of the Areal Extent of Contamination to Select the Horizontal Wall Alignment
2.0 Intermediate Submission - Construction Plans and Specifications	Intermediate Submission is due within 60 days of completion of Borings Along the Slurry Wall Alignment
3.0 Prefinal Submission, including;	The Prefinal Submission is due within 60 days of receipt of EPA's comments on the Intermediate Submission (Task 2.0)
3.1 Construction Plans and Specifications	
3.2 Cost Estimates	
3.3 Operation & Maintenance Plan	
3.4 Quality Assurance Project Plan for Construction	
3.5 Site Safety Plan for Construction	
4.0 Final Submission, including;	The Final Submission is due within 60 days of receipt of EPA's comments on the Prefinal Submission (Task 3.0)
4.1 Construction Plans and Specifications	
4.2 Cost Estimates	
4.3 Operation & Maintenance Plan	
4.4 Quality Assurance Project Plan for Construction	
4.5 Site Safety Plan	

TASK	REQUIREMENT
5.0 Permits/Approval Assistance	Identification and application for all necessary permits/approvals is to be initiated within 15 days of this Order ²

Footnote

2. Administrative Order Index No. II-CERCLA-00114

IV. Project Schedule For Aqueous Pretreatment/Treatment Facilities Design

TASK	REQUIREMENT
1.0 Preliminary Submission - Construction Plans and Specifications	The Preliminary Submission is due within 30 days of receipt of EPA's comments on the Results Evaluation and Treatment Option Selection Report
2.0 Intermediate Submission - Construction Plans and Specifications	The Intermediate Submission is due within 30 days of receipt of EPA's comments on the Preliminary Submission (Task 1.0)
3.0 Prefinal Submission, including;	The Prefinal Submission is due within 45 days of receipt of EPA's comments on the Intermediate Submission (Task 2.0)
3.1 Construction Plans and Specifications	
3.2 Cost Estimates	
3.3 Operation & Maintenance Plan	
3.4 Quality Assurance Project Plan for Construction	
3.5 Site Safety Plan for Construction	
4.0 Final Submission, including;	The Final Submission is due within 45 days of receipt of EPA's comments on the Prefinal Submission (Task 3.0)
4.1 Construction Plans and Specifications	
4.2 Cost Estimates	
4.3 Operation & Maintenance Plan	
4.4 Quality Assurance Project Plan for Construction	
4.5 Site Safety Plan for Construction	
5.0 Permit/Approvals Assistance	This Task will continue as necessary throughout the RD

II. Project Schedule for the Feasibility Study

<u>TASK</u>	<u>REQUIREMENT</u>
1.0 Description of Current Situation and Remedial Action Objectives (Chapter 1.0)	Submission due within 15 days of the effective date of the Order ¹
2.0 Identification and Screening of Remedial Action Technologies (Chapter 2.0)	Submission due within 21 days of the effective date of the Order ¹
3.0 Development and Screening of Alternatives (Chapter 3.0)	Submission due within 42 days of the effective date of the Order ¹
4.0 Detailed Analysis of Alternatives (Chapter 4.0)	Submission due within 84 days of the effective date of the Order ¹
5.0 Draft Final Feasibility Study Report	Submission due within 105 days of the effective date of the Order ¹
6.0 Revised Draft Feasibility Study Report	Submission due 15 days after receipt of EPA's comments on the Draft Final Feasibility Study Report

Footnote¹ Administrative Order Index No. II-CERCLA-00114

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

-----X
IN THE MATTER OF

Kin-Buc Landfill, Edison,
New Jersey:

Anthony Gaess,
Marvin Mahan,
Robert Meagher,
Earthline Company,
Chemical Waste Management, Inc.,
Filcrest Realty, Inc.,
Inmar Associates, Inc.,
Kin-Buc Inc.,
SCA Services, Inc.,
SCA Services of Passaic, Inc.,
Transtech Industries, Inc.,
f/k/a Scientific Inc., and
Wastequid, Inc.

Respondents.

Proceeding Pursuant to §106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended,
42 U.S.C. §9606(a).
-----X

ADMINISTRATIVE ORDER

Index No.
II-CERCLA-93-0101

I. JURISDICTION

A. This Administrative Order (the "ORDER") is issued to the above-captioned Respondents pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, dated January 23, 1987, and duly redelegated to the Regional Administrator of EPA, Region II. Notice of this ORDER has been provided to the New Jersey Department of Environmental Protection and Energy ("NJDEPE") pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

B. This ORDER is not intended to, nor does it, supersede, rescind, nullify, modify or affect in any manner any of the terms or provisions stated in any of the following three (3) Administrative Orders ("the pre-existing Orders") which have been issued by EPA relating to this Site on the dates noted below:

<u>Order Docket Number</u>	<u>Date Signed by EPA</u>
II-CERCLA-30102	September 23, 1983
II-CERCLA-60105	March 25, 1986
II-CERCLA-00114	September 21, 1990

This ORDER does not modify any of the obligations of the Respondents under the pre-existing Orders. The Respondents shall finance, perform and complete all of the activities required of them as set forth in these pre-existing Orders. The Respondents shall also comply with all of their obligations of any type which are set forth in the pre-existing Orders, including their obligation to design, construct and implement the remedial actions selected for the Site in the Record of Decision which was signed by the Regional Administrator of EPA - Region II on September 28, 1988.

Nothing contained in this ORDER shall affect any claim EPA may have at present or may have in the future for civil penalties against any or all of the Respondents, pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b), for any failure to comply with any of the terms of the pre-existing Orders.

II. DEFINITIONS

1. Unless noted to the contrary, the terms in this ORDER shall have the same meaning assigned to them in CERCLA, 42 U.S.C. §9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300. As used in this ORDER, the following terms shall have the following meanings:

a. CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq.

b. Construction shall mean all construction activities of any type which are required to implement the Selected Remedial Alternative.

c. Contractor shall mean the entities or individuals retained by the Respondents to perform any of the Work required by this ORDER.

d. Day shall mean calendar day.

e. EPA shall mean the United States Environmental Protection Agency.

f. Facility Coordinator shall mean the person designated by the Respondents who will be charged with the duty of being at all times knowledgeable of the performance of all Work required pursuant to this ORDER.

g. Hazardous Substance shall mean any substance that falls within the definition of a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and shall also mean any mixture(s) containing any such hazardous substance(s) at any concentration(s).

h. NCP shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, at 40 C.F.R. Part 300, and all amendments or modifications thereto.

i. NJDEPE shall mean the New Jersey Department of Environmental Protection and Energy.

j. Operable Unit I ROD shall mean the first Record of Decision for the Site which was signed by the Regional Administrator for EPA Region II on September 28, 1988, and all attachments thereto.

k. Operable Unit I RD/RA shall mean the remedial design and remedial action needed to implement the remedy selected in the Operable Unit I ROD, including the design and construction of source control measures, post-remedial monitoring, and operation and maintenance.

l. Operable Unit II RI/FS shall mean the second remedial investigation and feasibility study which determined the nature and extent of contamination at the Site and any off-Site impacts resulting from contaminant migration from the Site, and evaluated remedial response actions for contaminated sediments found in the Edmonds Creek/Marsh area.

m. Operable Unit II ROD shall mean the second EPA Record of Decision which was signed by the Regional Administrator of EPA Region II on September 28, 1992, and all attachments thereto. The Operable Unit II ROD is appended to this ORDER as Attachment A and is enforceable as part of this ORDER.

n. Operable Unit II RD/RA shall mean the remedial design and remedial actions needed to implement the remedy selected in the Operable Unit II ROD, including the design and

construction of sediment removal from the Edmonds Creek wetlands and the subsequent restoration and mitigation of the wetlands.

o. Paragraph shall mean a portion of this ORDER identified by an Arabic numeral.

p. Respondents shall mean the parties as named in the caption to this ORDER, and includes their officers, agents, subsidiaries, assigns and successors.

q. Section shall mean a portion of this ORDER identified by a Roman numeral, which may include one or more Paragraphs.

r. Selected Remedy or Selected Remedial Alternative shall mean the remedy selected for Operable Unit II of the Kin-Buc Landfill Site in the Record of Decision signed by the Regional Administrator of EPA-Region II on September 28, 1992.

s. Site or Kin-Buc Site shall mean the facility, as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9), (including the real property and all structures, soil and containers thereon) which is located at 383 Meadow Road, Edison, New Jersey, and which is commonly known as the Kin-Buc Landfill. The terms "Site" and "Kin-Buc Site" also includes any real property located outside the boundaries of the Kin-Buc Landfill into which hazardous substances or contaminants may have migrated or threaten to migrate from the above-mentioned facility.

t. State shall mean the State of New Jersey.

u. SOW shall mean the Statement of Work which is attached to this ORDER, labeled Attachment B. The Statement of Work is incorporated into this ORDER and is an enforceable part of this ORDER.

v. United States shall mean the United States of America, including the United States Environmental Protection Agency.

w. Work shall mean all activities of any type required by the terms of this ORDER, including all activities of any type which are necessary prerequisites or corequisites for the performance of any action required by this ORDER.

III. PARTIES BOUND

A. This ORDER shall apply to and be binding upon each and every Respondent, its principals, officers, agents, directors, assigns and successors. Respondents are jointly and severally responsible for carrying out all activities required by this

ORDER. No change in the ownership, corporate status, or other control of any Respondent shall alter any of that Respondent's obligations under this ORDER.

B. Respondents shall provide a copy of this ORDER to any prospective owner or successor before a controlling interest in any Respondent's assets, property rights or stock are transferred to that prospective owner or successor. Respondent shall provide a copy of this ORDER to each contractor, sub-contractor, laboratory, or consultant retained to perform any services under this ORDER, within ten (10) calendar days after the effective date of this ORDER or on the date of such retainer, whichever date occurs later. Respondents shall also provide a copy of this ORDER to each person representing any Respondent with respect to the Site or response action conducted pursuant to this ORDER, and shall condition all contracts and subcontracts entered into hereunder upon performance of all such response actions in conformity with the terms of this ORDER. With regard to the activities undertaken pursuant to this ORDER, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. Section 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this ORDER and for ensuring that their contractors, subcontractors and agents comply with this ORDER, and perform all activities in accordance with this ORDER.

- C. Within ten (10) calendar days after the effective date of this ORDER each Respondent that owns real property comprising all or part of the Site shall record a copy or copies of this ORDER in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this ORDER is indexed to the titles of each and every property at the Site so as to provide notice to third parties of the issuance and terms of this ORDER with respect to those properties. Respondents shall, within twenty (20) calendar days of the effective date of this ORDER, send notice of such recording and indexing to EPA.
- D. Not later than sixty (60) calendar days prior to any transfer by any Respondent of any real property interest in any property included within the Site, Respondents shall submit a true and correct copy of all transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

IV. FINDINGS OF FACT

A. This ORDER incorporates by reference all of the FINDINGS stated in the Administrative Orders issued by EPA having Docket Numbers II-CERCLA-00114, II-CERCLA-30102 and II-CERCLA-60105.

B. The Site contains two major mounds and one minor mound, the low-lying area between Kin-buc I and the Edison Landfill, Edmonds Creek and the hydrologically related wetlands, and Mill Brook/Martins Creek. The larger of the two major mounds, designated Kin-Buc I, covers approximately 30 acres and rises to a maximum elevation of 93 feet. The other major mound, designated Kin-Buc II, covers approximately 12 acres, rises to a maximum elevation of 51 feet and is located just north of Kin-Buc I. The low lying minor mound covers approximately 9 acres, rises 15 to 20 feet high and is designated as Mound B. Mound B lies west-southwest of Kin-Buc I, across the Edison Township Municipal Landfill access road and adjacent to the Raritan River. At the southeastern edge of Kin-Buc I, oily and aqueous phase leachate drains into an impounded area of tidally affected water referred to as Pool C. A fenced storage area currently utilized as part of an on-going removal action is next to Pool C. Marsh land to the east of Pool C is cut by numerous mosquito drainage channels, with its major drainage feature being Edmonds Creek; a tidally affected shallow stream that flows into the Raritan River to the south of Kin-Buc I. Pool C is connected to Edmonds Creek by a small channel. Mill Brook, located northwest of the Site, flows into Martins Creek, which has been partially filled in by Kin-Buc II. Flowing west, Martins Creek runs into the Raritan River just north of Mound B.

C. EPA has determined that the Site shall be remediated in operable units. On September 28, 1988, EPA issued a Record of Decision selecting a remedy for Operable Unit I, which called for source control measures for the landfill mounds, as well as the performance of the Operable Unit II RI/FS. On September 28, 1992, EPA issued the Operable Unit II ROD. The Operable Unit II ROD provides for the excavation and disposal of PCB-contaminated sediments from the Edmonds Creek/Marsh area and the subsequent mitigation of the wetlands areas impacted by excavation.

D. Leachate at the Site can be separated into two phases: an oily phase and an aqueous phase. Both the oily and aqueous phase leachates have migrated from the landfill into the surrounding environmental media, including ground water and sediments in Edmonds Creek and the associated tidal wetlands. The oily phase leachate, which contains polychlorinated biphenyls (PCBs) has migrated from Kin-Buc I into the refuse layer in the low-lying area between Kin-Buc I and the Edison Landfill, and into Pool C. From Pool C, the leachate has migrated into Edmonds Creek and the wetlands, as demonstrated by the distribution of contaminants such as PCBs, as well as certain metals and polyaromatic hydrocarbons (PAHs).

E. Sediments in the Edmonds Creek channel and in the surrounding wetlands contain PCBs, PAHs and metals. PCBs were found in concentrations less than 10 ppm on average throughout the wetlands, but portions of the Edmonds Creek channel contained

concentrations as high as 81 ppm, and areas immediately adjacent to Pool C exhibited concentrations between 100 ppm and 290 ppm. Distribution of these compounds, primarily Arochlors 1248 and 1254, indicates that PCBs migrated from Pool C via the connecting channel to Edmonds Creek.

F. PCBs and metals were detected in tissue samples taken from resident aquatic wildlife in Edmonds Creek. Results of the tissue analysis indicate that bioaccumulation of PCBs, as well as cadmium, chromium, copper, mercury and zinc, is occurring in fiddler crabs and some fish from Edmonds Creek which come into direct contact with contaminated sediment or ingest species which come into such contact.

G. PCBs are very persistent in the natural environment and are readily bioaccumulated. PCBs are carcinogenic in rats and mice. In humans, PCBs are associated with birth defects, an increased incidence of cancer, chloracne, and impaired liver function. Experimental animals exposed to PCBs have experienced increased incidence of cancer, neurobehavioral degradation, pathological changes in the liver, stomach, skin and other organs, and suppression of immunological function.

H. PCBs in aquatic wildlife may pose an unacceptable threat to human health if local fish or crustaceans are consumed as part of the diet. PCBs in sediments may adversely affect aquatic wildlife directly, or indirectly affect species such as predatory birds, as these contaminants continue to migrate from sediments into and upwards in the food chain.

I. A response action of the type contemplated by the NCP is required for contaminated sediments in Edmonds Creek and the wetlands in order to prevent and/or mitigate the actual or potential threat of harm to human health or welfare or the environment caused by the release and threatened release of hazardous substances from the Site. A remedial alternative for response action to address the migration of PCBs and other contaminants from sediments into the aquatic food chain has been selected and documented in the Operable Unit II ROD.

V. CONCLUSIONS of LAW

A. The Site is a "facility" within the meaning of that term as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

B. Many of the chemicals and substances referred to in the FINDINGS, above, which are located at or migrating from the Site are "hazardous substances" within the meaning of that term as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

C. The presence of hazardous substances at the Site and the migration of hazardous substances at or from the Site, as

described in the FINDINGS, above, are "releases" of a hazardous substance within the meaning of Sections 101(22) and 104(a) of CERCLA, 42 U.S.C. §9601(22) and §9604(a), respectively. Each such release of each hazardous substance at and from the Site is also an "actual...release of a hazardous substance from a facility" as that phrase is used in Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

D. The actual or potential migration of hazardous substances at or from the Site into the sediments of Edmonds Creek and the surrounding wetlands, and into local aquatic biota via bioaccumulation, as described in the FINDINGS, above, constitutes a "threatened release of a hazardous substance from a facility" within the meaning of Sections 101(22) and 106(a) of CERCLA, 42 U.S.C. §9601(22) and §9606(a), respectively. Each such actual or potential migration of a hazardous substance at or from the Site also constitutes a "substantial threat" of a release of a hazardous substance into the environment, within the meaning of Section 104(a)(1)(A) of CERCLA, 42 U.S.C. Section 9604(a)(1)(A).

E. Each and every Respondent to this ORDER is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

F. Each and every Respondent to this ORDER is a person who is jointly and severally liable, under one or more subsections of Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for all EPA response costs incurred by the Federal government relating to the Site.

VI. DETERMINATIONS

A. Based upon the FINDINGS set forth above, EPA has determined that the release and threatened release of hazardous substances into the environment at and from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

B. Response actions of the types contemplated by the NCP, 40 C.F.R. Part 300, Subpart E, are required at the Site to prevent or mitigate any actual or potential threat of harm to human health or welfare or the environment caused by the release and threatened release of hazardous substances at and from the Site.

C. The response actions described in and which are the subject of the Operable Unit II ROD and the SOW appended to this ORDER (Attachments A and B, respectively) are cost effective and are consistent with achieving a permanent remedy at the Site.

VII. ORDER

Based on the foregoing FINDINGS, CONCLUSIONS and DETERMINATIONS, it is hereby ORDERED that each and every Respondent identified in the caption of this ORDER undertake and complete all response actions needed to implement the Selected Remedy for the Site. All response actions required by this ORDER shall be performed and completed in accordance with all of the terms, provisions and schedules stated below and in the SOW. All activities required by this ORDER shall be completed as soon as possible even though maximum time periods for their completion are set forth in Attachments A and B to this ORDER.

A. Facility Coordinator and EPA Remedial Project Manager

1. A qualified Facility Coordinator, designated by Respondents, shall be available for contact by EPA throughout all phases of the Work required by this ORDER and until all the actions required by this ORDER are completed.
2. The Facility Coordinator shall be responsible for oversight of the implementation of this ORDER, including all activities required herein. The Facility Coordinator shall also be the primary contact person for communications with EPA and NJDEPE technical personnel. All communications transmitted by EPA to the Facility Coordinator shall be deemed received by and shall be deemed to be notice to all of the Respondents who perform the actions required by this ORDER. Copies of all correspondence and writings from the Respondents to EPA shall also be directed to the Facility Coordinator.
3. The Respondents shall submit the name, title, address, and telephone number of the Facility Coordinator and a description of his or her professional experience and qualifications for this position in writing to the EPA Remedial Project Manager ("RPM") for the Site and the state contact identified below within ten (10) calendar days of the effective date of this ORDER. The Facility Coordinator shall have sufficient technical and managerial expertise and qualifications to adequately oversee and manage all aspects of the Work contemplated by this ORDER. The Facility Coordinator shall not be an attorney nor shall he or she be a counsel for any or all of the Respondents.
4. EPA reserves the right to reject any Facility Coordinator proposed by the Respondents if it judges him or her to be unqualified for that position. In that event, the Respondents shall submit to EPA the name and qualifications of a new Facility Coordinator within ten (10) calendar days of EPA's notice of rejection of Respondents' Facility Coordinator.
5. EPA has the unreviewable right to select, and, at any time, to change, the RPM for the Site. If EPA changes its RPM, EPA

will inform Respondents in writing of the name, business address, and telephone number of the new RPM. EPA's RPM is Alison Barry, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 747, New York, New York 10278; telephone: (212) 264-8678.

6. EPA's RPM for the Site shall have all the authority vested in a Remedial Project Manager and an On-Scene Coordinator by the NCP. EPA's RPM shall have the authority, consistent with the NCP, to halt any of the Work required by or performed pursuant to this ORDER, and to take or direct any necessary response action.

B. Written Commitment to Comply

1. Within ten (10) calendar days of the effective date of this ORDER, each Respondent shall submit to EPA a signed, unconditional and unequivocal written commitment to comply with and to perform all of the Work required under this ORDER, including implementation of all components of the Operable Unit II RD/RA in accordance with the schedules and conditions set forth in this ORDER and any and all attachments or amendments thereto.

2. Within thirty (30) days of the effective date of this ORDER, Respondents shall also provide the following:

a. The names, addresses and telephone numbers of all general contractors, subcontractors and all other major contractors who will be performing any of the Work required by the terms of this ORDER, to the extent they are known as of the date the information is sent to EPA, and an identification of the tasks that each will be performing at the Site;

b. The curriculum vitae of all non-attorney professionals who will be performing any of the Work for the Respondents under this ORDER, including all professional engineers, ecologists, biologists, geologists, soil and foundation specialists, architects, civil engineers and design engineers;

3. Within thirty (30) days of the effective date of this ORDER, the Respondents shall establish and maintain financial security in the amount sufficient to complete the Work in one of the following forms:

a. a surety bond;

b. one or more irrevocable letters of credit equalling the total estimated cost of the Work;

c. a trust fund;

d. a guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Respondents; or

e. a guarantee to perform the Work by the Respondents.

If the Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to subparagraph (d) above, the Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If the Respondents seek to demonstrate their ability to complete the Work by means of the financial test and the corporate guarantee pursuant to subparagraph (d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this ORDER. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, the Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in this paragraph. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this ORDER.

4. Respondents must obtain written approval from EPA of the adequacy of their financial assurance in order to comply with the provisions of this Section.

5. If Respondents fail or refuse to unequivocally and unconditionally commit to comply with this ORDER as specified in this provision, Respondents shall be deemed to be in violation of this provision of this ORDER for such failure or refusal, and to be subject to penalties pursuant to Section 106(b) of CERCLA for each day thereafter that Respondents continue to violate this provision, in addition to penalties for noncompliance with any other provision of this ORDER and liability for treble damages pursuant to Section 107(c) of CERCLA.

C. Implementation of the Work

1. The Respondents shall finance, perform and complete all Work required by this ORDER including all activities specified in the SOW. The SOW is incorporated into and is enforceable as part of this ORDER. All Work shall be conducted in accordance with the NCP, the EPA Superfund Remedial Design and Remedial Action Guidance, the Final SAMP, and other applicable guidance or guidelines, and the requirements of this ORDER, including the standards and specifications contained in the SOW, and the

schedules contained therein. No Work conducted under the terms of this ORDER shall delay or otherwise interfere with the performance of the Operable Unit I RD/RA, as specified in Section A, Paragraph 3 of the SOW.

D. Public Participation

1. Respondents shall cooperate with EPA in providing information regarding the Work to be performed pursuant to this ORDER to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

VIII. GENERAL PROVISIONS

A. Access, Document Availability, and Retention of Records

1. Copies of all work plans, reports and any other documents required to be submitted to EPA under this ORDER shall be sent by certified mail or express mail to the following addresses:

four (4) copies:

Chief, New Jersey Superfund Branch II
U. S. Environmental Protection Agency
Emergency and Remedial Response Division
26 Federal Plaza, 7th Floor
New York, New York 10278
Attn.: Project Manager - Kin-Buc Site

three (3) copies:

Chief, Bureau of Federal Case Management
Division of Responsible Party Site
Remediation
New Jersey Department of Environmental
Protection and Energy
CN 028
401 East State Street-Floor 5
Trenton, New Jersey 08625
Attn.: Case Manager - Kin-Buc Site

In the event that EPA requests more than the number of copies stated above of any report or documents required by this ORDER for itself or the State, Respondents shall provide the number of copies requested.

2. All documents produced by the Respondents and submitted to EPA or NJDEPE in the course of implementing this ORDER shall be available to the public unless Respondents claim they are

confidential using the procedures described in 40 C.F.R. Part 2. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA under 40 CFR Section 2.203, provided such claim is not inconsistent with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7) or other provisions of law. This claim shall be substantiated by Respondents at the time the claim is made. If such a substantiated claim is made with regard to any of the records or any other documents produced by the Respondents or their contractors, EPA will release such documents in accordance with the procedures stated in 40 C.F.R. Part 2, Subpart B and Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7). No sampling, hydrological, geological, soil chemical analyses, groundwater quality data, or information specified under Section 104(e)(7)(F)(i)-(viii) of CERCLA, relating to the Site shall be considered confidential.

3. The Respondents shall allow EPA and EPA contractors and agents to have access to all records in the possession or control of the Respondents of their agents which relate in any manner to the Site or to the Work required under this ORDER. All such records shall be stored at a location in the State of New Jersey which is accessible to EPA officials. The Respondents shall make all such records available for any EPA or NJDEPE official to review and copy within three days after receiving a request from EPA or NJDEPE for access to such records. All employees and contractors of the Respondents who engage in any activity under this ORDER shall be available to and shall cooperate with EPA and EPA agents and contractors.

4. All data and information relating to the implementation of this ORDER shall be retained by Respondents for a period of ten (10) years after the effective date of this ORDER. The Respondents shall inform the EPA Project Manager and NJDEPE contact in writing within ten (10) days of the effective date of this ORDER of the name and address of the person who will be charged with retaining these records and where they will be located during this ten (10)-year period. Any and all such records are to be made available to EPA upon request during any business day throughout that period of time.

5. The Respondents shall allow unimpeded access to all areas of the Site and into all structures thereon by all EPA and NJDEPE representatives, agents, contractors and consultants. The Respondents shall permit such EPA and NJDEPE agents to enter and move about the Site at will at all times and shall allow such officials or agents of EPA or NJDEPE to undertake any observations, response actions or any other activities which EPA or NJDEPE elects to undertake at the Site at its option, including but not limited to the following:

- a. Monitoring the progress of activities taking place;

- b. Verifying any data or information submitted to EPA or NJDEPE;
 - c. Conducting investigations relating to contamination at or near the Site;
 - d. Obtaining samples at the Site; and
 - e. Inspecting and copying records, operating logs, contracts, or other documents required to assess the Respondents' compliance with this ORDER.
6. Respondents shall make available to EPA and NJDEPE as promptly as reasonably possible, the results of all sampling and/or tests or other data generated by Respondents with respect to the implementation of this ORDER.
7. At the request of EPA or NJDEPE, the Respondents shall provide split or duplicate samples to EPA and NJDEPE or allow split or duplicate samples to be taken by EPA or NJDEPE or their authorized representatives of any samples collected by Respondents pursuant to the implementation of this ORDER. Respondents shall notify EPA and NJDEPE not less than ten (10) days in advance of any sample collection activity. In addition, EPA and NJDEPE representatives shall have the right to take any additional samples that they deem necessary.
8. Nothing in this ORDER shall be construed to limit EPA's or NJDEPE's rights of access or rights to obtain information pursuant to applicable law.
9. The Respondents shall use their best efforts to obtain all access agreements which are needed to implement the terms of this ORDER. Such access agreements will also provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondents or Respondents' authorized representatives and contractors. Such agreements shall specify that the Respondents are not EPA's representatives with respect to liability associated with Site activities. Respondents' best efforts shall include, but not be limited to, reasonable efforts to identify, locate and contact (in writing) the owner of the property, seeking judicial assistance, and providing reasonable compensation to any off-Site property owner. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. If, despite such best efforts, the Respondents cannot obtain any particular access agreement or access which is required for implementation of the terms of this ORDER, the Respondents shall so notify the EPA RPM in writing and shall specify the real property in question and the efforts which the Respondents have taken to obtain entry onto the property in question. If EPA determines that access onto any such property is needed to implement any of the terms of this ORDER and that

Respondents have used their best efforts to obtain such access to no avail, EPA in its sole discretion may use its legal authorities to facilitate access for the Respondents to that property. In that event, the Respondents shall continue to implement all terms of this ORDER which, in the view of EPA, can still be implemented regardless of any failure to obtain access to any property. However, failure of Respondents to gain access shall not be construed as excusing performance by the Respondents of any of their obligations under this ORDER.

B. EPA Review of Submissions.

1. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this ORDER, EPA may:

- (a) approve the submission;
- (b) approve the submission with modifications made unilaterally by EPA;
- (c) disapprove the submission and direct Respondents to resubmit the document after modifying the document in accord with EPA's comments and as directed by EPA; or
- (d) disapprove the submission and assume responsibility for performing all or any part of the response action.

In the event of EPA disapproval pursuant to subsection (d), above, Respondents shall be deemed to be in violation of the relevant provisions of this ORDER for failure to make an adequate submission beginning on the day following the date the deliverable, plan, report or other item is due and on each and every day thereafter.

2. In the event of approval or approval with unilateral modifications by EPA of any submission or re-submission pursuant to this Section VIII.B, EPA will notify Respondents of such approval or approval with modifications, and the submission or re-submission shall be deemed final and effective the date EPA's notice of approval is signed. Upon receipt of EPA's notice of approval, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA. EPA shall remain the final arbiter in any dispute regarding the sufficiency or acceptability of any such plan, report or other item, and EPA may modify it unilaterally at any time by notifying Respondents of such modification.

3. In the event that EPA disapproves any submission and directs Respondents to re-submit such submission with modifications pursuant to Paragraph B.1(c), above, Respondents shall modify the submission in accord with EPA's comments and as directed by EPA, and shall submit the modified document to EPA within fifteen (15) calendar days of receipt of EPA's comments or within such other time period as EPA may specify in writing. Failure to make a timely and conforming re-submission in compliance with this Paragraph shall constitute a separate violation of this ORDER for each day such re-submission is late or remains deficient.

4. EPA may approve, approve with unilateral modifications, disapprove with a requirement for further modification, or disapprove any re-submission made pursuant to Paragraph B.3, above, in accordance with the procedures of this Section VIII.B, except that any EPA action in approving with unilateral modifications, disapproving, or disapproving any such re-submission with a requirement for further modification shall under no circumstances be construed as relieving Respondents of liability for daily penalties and treble damages for failure to make a timely and conforming first re-submission pursuant to Paragraph B.3, above. Each subsequent late or deficient re-submission shall constitute a separate violation of Paragraph B.3, above.

5. EPA's comments pursuant to Paragraphs B.1(c) and B.3, above, may require Respondents to perform such additional investigatory Work, verification sampling, evaluations, or other response action as EPA may find necessary. Any such additional investigatory work or other response action, including any necessary work plans and reports, shall be performed by Respondents as directed by EPA and in accordance with any schedules specified by EPA. A requirement by EPA for additional investigatory work or other response action pursuant to this paragraph shall not excuse performance of any other obligation under this Section VIII.B and shall not be construed to alter in any way Respondents' obligations to make timely and conforming re-submissions pursuant to Paragraph B.3, above.

C. Amendments and Scope of ORDER Generally

1. All reports, the SAMP, EPA-approved Work plans and other writings or amendments required under the terms of this ORDER shall, upon approval by EPA, be deemed incorporated into this ORDER and may be enforced as any other provision in this ORDER.

2. No informal advice, guidance, suggestions or comments by EPA or NJDEPE officials shall be construed to relieve Respondents of any of their obligations under this ORDER.

3. Any and all modifications to this ORDER, all approvals or disapprovals of submissions provided to EPA by the Respondents pursuant to this ORDER, or other communications from EPA to Respondents required by this ORDER, must be in writing and signed by the Chief, New Jersey Superfund Branch II, Emergency and Remedial Response Division, U.S. EPA, Region II.

a. EPA shall have sole authority to make any modifications to the Final Operable Unit II Remedial Design (RD) Work Plan, as described in Section C, Paragraph 2 in the SOW, and any work plans or schedules submitted pursuant thereto, and EPA may unilaterally make any such modifications at any time prior to the completion of all Work required by this ORDER.

b. EPA alone shall be the final arbiter of all issues and disputes concerning: i) any work plan, or other plan, deliverable or schedule which EPA approves or which the Respondents propose under the terms of this ORDER, and ii) all Work which shall be required or performed under this ORDER or under any work plan, or other document which EPA approves pursuant to the terms of this ORDER.

D. Insurance and Indemnification

1. All contractors and subcontractors the Respondents use for work at the Site must have adequate liability coverage or must be indemnified by the Respondents for any and all liability which may result from any activities at the Site pursuant to this ORDER.

E. Professional Standards, Permits and Compliance with other Laws

1. All of the Work conducted pursuant to this ORDER shall be performed in accordance with prevailing professional standards.

2. All activities carried out by Respondents pursuant to this ORDER shall be done in accordance with all applicable federal, state and local laws, regulations, ordinances and other requirements.

3. All activities conducted by Respondents pursuant to this ORDER shall comply with the requirements of CERCLA, the NCP, and all applicable OSHA regulations for worker health and safety as found in 29 C.F.R. §1910 et seq., and elsewhere.

4. All materials removed from the Site shall be disposed of or treated at a facility approved by EPA's RPM and in accordance

with Section 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3), with the EPA Procedures for Planning and Implementing Off-Site Response Actions, OSWER Directive 9834.11 (November 13, 1987) and/or any subsequent final EPA "off-site" guidance or policy documents, and with all other applicable federal, state and local requirements. Respondents shall conduct off-Site disposal activities in conformity with the NCP and any amendments thereto. All disposal of materials conducted by the Respondents pursuant to performing any of the Work under this ORDER shall comply with all provisions of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601 et seq., and all regulations promulgated pursuant to both RCRA and TSCA, as well as any other applicable or relevant and appropriate federal laws or regulations.

5. Respondents shall also be responsible for compliance with all applicable requirements relating to off-Site waste management under the New Jersey Solid Waste Management Act, N.J.S.A. §13:1E-1 et seq., including the standards for generators and transporters of hazardous waste promulgated under 40 C.F.R. Parts 262 and 263. Respondents must also comply with local requirements, as identified by the municipalities.

6. Respondents shall also use and sign manifest forms for all hazardous wastes transported from the Site. Respondents shall also designate all destination facilities that they propose to use for such off-Site transfer, storage, treatment or disposal in the Site Management Plan for Remedial Construction which is required by the SOW.

7. Respondents shall be responsible for obtaining all necessary federal, state and local permits, licenses and other governmental and private authorizations, including access agreements, needed to carry out the Work required by this ORDER.

8. Pursuant to Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. For any portion of the Work performed on-Site which would, but for Section 121(e) of CERCLA, require a federal or state permit or approval, Respondents shall meet the substantive requirements of any permit applications in a timely manner as specified by EPA, and take all other actions necessary to obtain and to comply with all such permit equivalents or approvals.

9. This ORDER is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

F. United States Not Liable

1. The United States Government and any and all agencies thereof shall not be liable for any injury or damage to any person or property resulting from any acts or omissions of any of the Respondents and any employees, contractors, or agents of the Respondents while performing any activity related to this ORDER; the United States Government and any and all agencies thereof shall not be a party to any contract entered into by Respondents in carrying out any activity pursuant to this ORDER, and the Respondents shall not represent to anyone that the United States Government or any agency thereof is or may be a party to any such contract.

2. Notwithstanding approvals which may be granted by the United States, the State, or other governmental entities, the Respondents shall assume any and all liability arising from or relating to Respondents' acts or omissions or the acts or omissions of any of Respondents' contractors, subcontractors or any other person acting on behalf of Respondents in the performance of the Work, or Respondents' failure to perform properly or completely the requirements of this ORDER.

G. Noncompliance

1. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this ORDER.

2. Any failure by Respondents to carry out any terms of this ORDER may result in EPA unilaterally taking or funding the actions required under this ORDER, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

3. Any failure by Respondents to comply with any provision in this ORDER or any provision or schedule in the SOW or any work plan or other document incorporated by reference or attached to this ORDER, including failure of any Respondent to cooperate with or assist any other Respondent in carrying out its obligations under this ORDER, shall be considered a violation of this ORDER.

4. If the Respondents violate any provisions of this ORDER, EPA may elect to:

a. Demand that the Respondents cease work at the Site; and/or

b. Use federal funds to complete the Work required by this ORDER; and/or

c. Initiate an action against any or all of the Respondents under Sections 106(b), 107(a) and/or 107(c) of CERCLA, 42 U.S.C. §§9606(b), 9607(a), and/or 9607(c), respectively; and/or

d. Take any other actions authorized under federal laws or regulations.

5. Nothing stated in this ORDER shall preclude EPA from taking any additional enforcement actions, and/or any actions as it may deem necessary for any purpose, including the prevention or abatement of an imminent and substantial endangerment to the public health or welfare or the environment arising at or in the vicinity of the Site.

6. If EPA incurs any response costs as a result of the failure of the Respondents to comply with any schedules, terms or provisions of this ORDER, the Respondents shall be liable pursuant to Section 107(c) of CERCLA for treble damages for each and every dollar in response costs incurred by EPA as result of such failure to comply.

7. If the Respondents fail to comply with any of the provisions or schedules set forth in this ORDER each Respondent named in this ORDER shall be liable pursuant to 106(b) of CERCLA for a penalty of up to \$25,000 per day for each and every day of each violation of each provision of this ORDER in addition to the treble damages liability stated in Paragraph 6, above.

8. If Respondents fail to fully implement and satisfactorily complete all of the Work set forth in this ORDER, the SOW, and in all EPA approved workplans and schedules attached hereto or incorporated herein on or before the date specified for such completion pursuant to this ORDER, each Respondent named in this ORDER shall be liable for a penalty of up to \$25,000 per day for such failure pursuant to §106(b) of CERCLA for each and every day after that date until all such Work is completed by the Respondents to EPA's satisfaction.

H. Reservations of Rights

1. Nothing contained in this ORDER shall affect the right of EPA to initiate an action for civil penalties against any entity, including any of the Respondents, pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b).

2. Nothing contained in this ORDER shall affect the right of EPA to pursue an action against any entity, including any one or more of the Respondents (or any other responsible party), pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for recovery of any costs incurred by EPA relating to this ORDER and/or for any other

response costs which have been incurred or will be incurred by the United States relating to the Site.

3. Nothing contained in this ORDER shall affect the right of EPA to enter into any Consent Decree, to issue any Consent Order or to issue any other Orders unilaterally to any or all of the Respondents (or to any other responsible parties for the Site) pursuant to CERCLA, or to initiate a judicial action to require the performance of any additional response actions which EPA determines are necessary for the Site.

4. Nothing contained in this ORDER shall act as a bar to, a release of, a satisfaction of, or a waiver of any claim or cause of action which EPA has at present or which EPA may have in the future against any entity, including any or all of the Respondents, on any matters relating to the Site.

5. Nothing contained in this ORDER shall be construed to mean that the Respondents are the only potentially responsible parties with respect to the release and threatened release of hazardous substances at the Site.

6. Nothing contained in this ORDER shall affect any right, claim, interest, defense, or cause of action of EPA or the Respondents with respect to any entity which is not a party to this ORDER. Nothing in this ORDER constitutes a decision by EPA on preauthorization or on any approval of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

7. This ORDER and all EPA-approved work plans, specifications, and other documents approved by EPA, prepared in compliance herewith, shall be enforceable pursuant to Sections 106(b) and 113(b) of CERCLA, 42 U.S.C. §9606(b) and §9613(b), respectively.

8. Nothing contained in this ORDER shall preclude the State of New Jersey or any agency or department thereof from taking or maintaining any enforcement action or litigation relating to the Site, including issuing any directive pursuant to State law relating to the Site.

I. Notification and Reporting Requirements

1. Respondents shall provide monthly progress reports to EPA and NJDEPE as provided herein by the tenth (10th) day of every month following the effective date of this ORDER. At a minimum, the progress reports shall: (1) describe all activities undertaken by the Respondents pursuant to the terms of this ORDER during the month immediately preceding the date of submission of the report; (2) identify all activities which will be undertaken by the Respondents in the next month in order to comply with all terms of this ORDER; (3) identify potential delays, if any, which the Respondents foresee in completing the Work required by this

ORDER; (4) include all the results of sampling and tests and all other data received by Respondents in the preceding month; (5) provide a quantified estimate of the percentage of the Work which is required by the ORDER which has been completed as of the date of submission of the progress report to EPA; and 6) describe all corrective actions taken in response to any violations or problems which occurred during the prior month.

2. EPA will notify the Respondents in writing if EPA determines that a progress report is incomplete or deficient. Respondents shall make the necessary revisions and resubmit the revised report with the next scheduled progress report. If the next scheduled progress report is due less than seven (7) days following Respondents' receipt of the notice of deficiency, the revised report shall be submitted with the subsequently scheduled report. Respondents shall be deemed in violation if EPA determines that the revised progress report is deficient.

3. Respondents shall provide the EPA RPM at least ten (10) days advance notice of the commencement of any field activities undertaken pursuant to the terms of this ORDER at the Site.

4. Upon the completion of all of the Work required by this ORDER, the Facility Coordinator designated by the Respondents shall notify the EPA RPM and the state contact in writing by registered mail that all of the Work required by this ORDER has been completed.

J. EPA Periodic Review

1. Under Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations promulgated thereunder, EPA may review the Site to assure that the Work performed pursuant to this ORDER adequately protects human health and the environment. Until such time as EPA certifies completion of the Work performed pursuant to this ORDER for which such certification, as described in the SOW under Section F, Paragraph 3, is appropriate, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct reviews under Section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional response actions or to modify any of the Work previously performed or to be performed pursuant to this ORDER.

K. Additional Response Action

1. EPA may determine at any time that in addition to the response action required by this ORDER and all attachments hereto or documents incorporated herein by reference, additional response action, including but not limited to additional investigatory work or additional response activities (whether or

not identified during the review process under Section 121(c) of CERCLA), is necessary to meet relevant performance standards, protect human health or the environment, or determine the nature and extent of contamination related to the Site. At such time as EPA makes such a determination and notifies the Respondents that such additional investigatory work or response actions are needed, the Respondents shall submit to EPA a written, unequivocal and unconditional commitment to perform such necessary additional Work within seven (7) calendar days after receipt of EPA's notice of the necessity for additional response action. Within thirty (30) calendar days of receipt of EPA's notice or within such other time period as EPA may specify, the Respondents shall submit a work plan, including a schedule, for performance of such additional response action. EPA will review the work plan in accordance with the procedures set forth herein for EPA review of submissions. Respondents shall implement the work plan following EPA's approval or EPA's approval with unilateral modifications in accordance with those procedures.

L. Endangerment and Emergency Response

1. In the event of any action or occurrence during the performance of Respondents' obligations under this ORDER which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate response action to prevent, abate, or minimize the threat, and shall immediately notify EPA's Remedial Project Manager (RPM). If EPA's RPM is not available, Respondents shall notify EPA's Response and Prevention Branch in Edison, New Jersey, at (908) 548-8930.
2. Respondents shall take such response action in consultation with EPA's RPM and in accordance with all applicable provisions of this ORDER, including but not limited to the Health and Safety Plan and the Contingency Plan.
3. Nothing in this Section shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment, or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

IX. OPPORTUNITY TO CONFER

Respondents may confer with EPA to discuss this ORDER, including its applicability, the FINDINGS upon which the ORDER is based, the appropriateness of any action or activity required to be undertaken herein, or any other relevant issues or contentions which the Respondents may have with regard to this ORDER at the

conference with EPA which has been scheduled as noted in the transmittal letter which accompanies this ORDER. This conference is not and shall not be deemed to be an adversarial proceeding or part of a proceeding to challenge this ORDER.

X. EFFECTIVE DATE

This ORDER shall become effective on the tenth (10th) day following the date it is signed by the Regional Administrator, as indicated below.

IT IS SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

~~CONSTANTINE SIDAMON-ERISTOFF~~
Regional Administrator
U.S. Environmental Protection Agency
Region II
New York, New York 10278

DATE 11/19/92

ATTACHMENT "B"

STATEMENT OF WORK

A. WORK TO BE PERFORMED

1. The Work to be conducted under this ORDER is planned to reduce the risks to human health and the environment caused by the uptake of hazardous substances, pollutants and contaminants into resident wildlife at the Kin-Buc Site from sediments via bioaccumulation. As described in greater detail below, the Work to be performed under this ORDER shall include, but shall not be limited to, the following elements:

- a. Remedial Design of the selected alternative (hereinafter referred to as the "Selected Remedial Alternative") as set forth in EPA's Record of Decision dated September 28, 1992 (the Operable Unit II ROD);
- b. Remedial Construction of the Selected Remedial Alternative;
- c. Implementation of a Wetlands Restoration and Mitigation Program; and
- d. Operation and Maintenance ("O&M") of the Selected Remedial Alternative including effectiveness monitoring of surface and ground water, sediment, and biota, in order to ensure the continued achievement of the objectives of the Selected Remedial Alternative.

2. The major components of the Selected Remedial Alternative, or Selected Remedy, for Operable Unit II of the Kin-Buc Landfill Site include the following:

- a. excavation of approximately 2200 cubic yards of sediments containing PCBs at levels greater than 5 parts per million;
- b. consolidation of the excavated sediments within the Operable Unit I containment system;
- c. restoration and mitigation of wetlands areas impacted by the excavation of contaminated sediments; and
- d. long-term monitoring of ground and surface water to ensure the effectiveness of the remedy.

3. If EPA determines, at any time, that the Work to be performed has not been or cannot be conducted according to the schedule described in this ORDER, EPA will notify the Respondents that the Selected Remedial Alternative will be modified as described in the Operable Unit II ROD. The Contingency Remedial Alternative, which provides for off-Site disposal of excavated sediments, will replace the primary

alternative, which provides for on-Site disposal within the Kin-Buc Landfill. Under no circumstances will implementation of the remedy selected in the Operable Unit I ROD be delayed to permit disposal of excavated sediment within the Kin-Buc Landfill containment area.

B. QUALIFICATIONS OF SUPERVISORY ENGINEER

The Remedial Design Work, Remedial Construction Work, Operation and Maintenance ("O&M") Work, and any other Work performed by Respondents pursuant to this ORDER shall each be performed under the direction and supervision of a qualified, State licensed professional engineer. Prior to the initiation of any such Work, Respondents shall notify EPA and the State, in writing, of the name, title, proposed responsibilities, and qualifications of the supervisory engineer and the names of all contractors and subcontractors proposed to be used in the development and implementation of the remedial Work to be performed by those parties. Selection of any such engineer, contractor or subcontractor shall be subject to approval by EPA.

C. REMEDIAL DESIGN PLANNING

1. On or before December 11, 1992, Respondents shall award a contract for the performance of the Remedial Design.

2. On or before January 15, 1992, Respondents shall submit a detailed Remedial Design Work Plan to EPA and the State for review and subsequent approval by EPA. The Remedial Design Work Plan shall be in conformance with the EPA document entitled "Superfund Remedial Design and Remedial Action Guidance" (OSWER Directive 9355.0-4A, June 1986) and with any additional guidance documents provided by EPA. To the extent that the requirements of this SOW deviate from such guidance, the requirements of the SOW shall override the conflicting portions of the guidance.

The Remedial Design Work Plan shall include the following items (to the extent that Work will be performed regarding the items):

a. Site Management Plan

The Site Management Plan ("SMP") for Remedial Design Activities shall be an overall plan which shall include identification of major contractors and major subcontractors and their respective responsibilities for performance of remedial design activities. The SMP shall include a list of all key responsible employees expected to participate in the Work and the curriculum vitae of each. The respective responsibilities for each key responsible employee shall be described. A provision shall be included for providing EPA and the State with supplemental information prior to any other major contractors,

major subcontractors and key responsible employees becoming involved in the Work.

b. Plan for Additional Studies

The Plan for Additional Studies shall describe all data collected during the Operable Unit II Remedial Investigation, including the Wetlands Delineation and WET Evaluation, as well as any additional data collected during the Operable Unit I Remedial Design, which is relevant to the implementation of the Operable Unit II Selected Remedy. This data includes, but is not limited to, analyses of sediment and surface water samples and qualitative surveys of wildlife, vegetation, and soil types within the Operable Unit II area. On the basis of this data survey, the Plan shall identify any further data needs and propose any additional studies necessary to satisfy these needs prior to construction of the Selected Remedial Alternative. These studies shall be conducted according to the Sampling, Analysis and Monitoring Plan described below in the following subparagraph.

c. Sampling, Analysis and Monitoring Plan

- (i) The Sampling, Analysis and Monitoring Plan ("SAMP") shall provide for sampling, testing and analysis to obtain any additional data needed for performing the Remedial Design. The SAMP shall be based upon the Sampling and Analysis Plan ("SAP") for the Operable Units I RD/RA and the Operable Unit II RI/FS submitted in June 1989 and revised in September 1989, and as amended by any subsequent correspondence between EPA and the Respondents, and as modified by the requirements of this ORDER and the Selected Remedial Alternative described in the Operable Unit II ROD.

Field sampling methods utilized shall be selected using the "Region II CERCLA Quality Assurance Manual," EPA, Region II, October 1989, and the "NJDEPE Field Sampling Procedures Manual", revised in May 1992, as guidance. All testing methods and procedures shall be fully documented and, if applicable, referenced to established methods or standards.

Where appropriate and applicable, analyses will be performed in accordance with the EPA Contract Laboratory Program ("CLP") methods or with methods referenced in the "Test Methods for Evaluating Solid Wastes" (SW-846 3rd Edition, November 1986). CLP methods are those methods contained in "USEPA Contract Laboratory Program Statement of Work, Inorganic Analysis", Document Number ILM01.0 and "USEPA Contract Laboratory Program Statement of Work

for Organic Analysis", Document Number OLM01.6. For analyses performed in accordance with CLP methods, subsequent deliverables must be submitted according to CLP criteria. For those analyses not utilizing CLP methods, the subsequent deliverables must be similar to the CLP deliverables format. An example of each such format must be submitted as part of the SAMP to EPA and the State for review and subsequent approval by EPA prior to use.

(ii) The Sampling, Analysis and Monitoring Plan shall include, but not be limited to, the following items:

- (1) A map depicting proposed sampling locations with provisions for submitting a surveyed map depicting actual sampling locations in the draft Remedial Design Report.
- (2) A detailed description of all sampling, analysis, testing and monitoring to be performed in support of the performance of the Remedial Design. The description shall include sampling methods, analytical and testing methods, frequency of sampling and sampling locations.
- (3) A discussion of how the sampling, analysis, testing and monitoring will produce data useful for the Remedial Design or for other purposes.
- (4) A schedule for performance of specific tasks.
- (5) A Quality Assurance Project Plan ("QAPjP"), as described below.

(iii) QAPjP Requirements

- (1) The QAPjP shall be completed in accordance with the "Region II CERCLA Quality Assurance Manual," EPA, Region II, October 1989. In the event of any conflict between the requirements of that document and other quality assurance or quality control requirements stated or cited below, the requirements of that document shall supersede the conflicting portions of the other requirements. The QAPjP for the Operable Unit II Remedial Design shall be based upon the QA/QC Plan submitted as part of the Operable Units I and II revised SAP submitted by the Respondents in September 1989, as modified by any subsequent correspondence between EPA and the respondents, as well as by the requirements of this ORDER and the Selected Remedial Alternative described in

the Operable Unit II ROD.

- (2) In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this ORDER, Respondents shall ensure that the QAPjP provides for the following:
- (a) The QAPjP shall include, at a minimum, the following items:
- Title Page
 - Table of Contents
 - Project Description
 - Project Organization and Responsibility
 - Quality Assurance Objectives
 - Sampling Procedures
 - Sample Custody
 - Calibration Procedures and Frequency
 - Analytical Procedures
 - Data Reduction, Validation and Reporting
 - Internal Quality Control Checks
 - Performance and Systems Audits
 - Preventive Maintenance
 - Specific Routine Procedures Used to Assess Data Precision, Accuracy and Completeness
 - Corrective Action
 - Quality Assurance Reports to Management.
- (b) Respondents shall use procedures set forth in the EPA approved SAMP and shall utilize standard EPA Chain of Custody procedures, as set forth in the EPA document entitled "National Enforcement Investigations Center Policies and Procedures Manual", as revised in May 1986.
- (c) All laboratories utilized by Respondents for analysis of samples taken pursuant to this ORDER shall perform all analyses according to the methods contained in the SAMP, which have been approved in writing by EPA.
- (d) All analytical data shall be submitted in a CLP deliverables format, or in a similar approved format, to EPA and the State.
- (e) All analytical data shall be validated according to the

procedures contained or referenced in the approved QAPjP. When applicable and appropriate, the validation procedures shall be in accordance with the "Region II CERCLA Quality Assurance Manual", EPA, Region II, October 1989. When not applicable and appropriate, Respondents shall submit other validation procedures with the QAPjP to EPA for approval.

- (f) Prior to engagement, each laboratory utilized by Respondents for analysis of samples taken pursuant to this ORDER shall demonstrate its ability to perform all tasks required for those analyses to be performed by it.
- (g) All contracts with laboratories utilized by Respondents for analysis of samples taken pursuant to this ORDER shall provide for access of EPA and State personnel or their authorized representatives to assure the accuracy of laboratory results related to the Site.
- (h) All contracts with laboratories utilized by Respondents under this ORDER shall require laboratories to analyze samples submitted by EPA or the State for quality assurance purposes.
- (iv) The Sampling, Analysis and Monitoring Plan must be approved by EPA prior to the commencement of any activities to which it pertains.

d. Health and Safety Plan

- (i) The Health and Safety Plan ("HASP") for Remedial Design Work shall address the protection of public health and safety and the environment, as well as the response to contingencies which could impact health, safety and the environment during the Remedial Design period. The HASP for the Operable Unit II Remedial Design shall consist of the HASP for the Operable Unit I RD/RA and the Operable Unit II RI/FS submitted in June 1989, as modified by any

subsequent correspondence between EPA and the Respondents, as well as by the requirements of the Operable Unit II Selected Remedial Alternative and this ORDER.

- (ii) Site activities concerning inspections, investigations, and sample collection must be performed in such a manner as to assure the safety and health of workers so engaged. The HASP shall be developed in accordance with the Occupational Safety and Health Administration, U.S. Department of Labor ("OSHA") requirements cited below, and in accordance with EPA's "Health and Safety Audit Guidelines", EPA/540/G-89/010, December 1989. All Site activities shall be conducted in accordance with all pertinent general industry (29 CFR 1910) and construction (29 CFR 1926) OSHA standards, as well as any other State or municipal codes or ordinances that may apply. All Site activities shall also comply with those requirements set forth in OSHA's interim final rule entitled "Hazardous Waste Operations and Emergency Response", 29 CFR 1910.120, Subpart H, as described in the Federal Register of December 19, 1986, until such time as the final rule takes effect.
- (iii) The HASP shall include, at a minimum, the following items:
 - (1) Plans showing the location and layout of any temporary facilities to be constructed on or near the Site.
 - (2) Description of the known hazards and evaluation of the risks associated with the Site and the potential health impacts related to the Site activities.
 - (3) List of key personnel and alternates responsible for Site safety, response operations and protection of the public.
 - (4) Description of levels of protection (based on specified standards) to be utilized by all personnel and a listing of protective equipment to be utilized.
 - (5) Delineation of work, decontamination and safe zones, and

definitions of the movement of zones; including a map showing the location of these zones.

- (6) Description of decontamination procedures for personnel and equipment, and handling/removal of disposable clothing or equipment.
 - (7) Incident emergency procedures which address emergency care for personnel injuries and exposure problems, and containment measures. These procedures shall include evacuation routes, internal and external communications procedures and procedures for response to fires and explosions. Local agencies with the capability to respond to emergencies shall be identified and their capabilities shall be described.
 - (8) Description of the personnel Medical Surveillance Program(s) in effect.
 - (9) Description of monitoring for personnel safety.
 - (10) Description of routine and special personnel training programs.
 - (11) Description of an air monitoring program to determine concentrations of airborne contaminants to which workers on-Site and to which persons at the Site boundary may be exposed.
- (iv) The HASP must be reviewed by EPA (with EPA comments incorporated into the document) prior to commencement of the Work to which the HASP pertains.
- e. Remedial Design Schedule and Draft Schedule for Remedial Construction and O&M Activities
- (i) The Remedial Design Schedule and draft schedule for Remedial Construction and O&M activities shall be in the form of a Task/Subtask activity bar chart or critical path method sequence of events. The Remedial Design Work Plan schedule shall provide for completion and submittal to EPA of the Preliminary Remedial Design Report on or

before May 15, 1993 and the Draft Final Design Report on or before August 30, 1993 (See Sections D., E. and F., below, for Remedial Design, Remedial Construction and O&M requirements.)

- (ii) The draft schedule for Remedial Construction and O&M activities may be revised during the remedial process. (See Paragraph D.2.d., below.)

f. Plan for Obtaining Permits, Access Approvals and Other Approvals

Such plan shall list and address any approvals or permit equivalencies which Respondents will require to comply with this ORDER. The plan shall detail how such approvals or equivalencies will be sought and will include a schedule for obtaining all necessary approvals or equivalencies. Such approvals may include permission of owners of property near the Site for access to install wells, monitoring or other activities; and approvals of off-Site waste management/treatment facilities, as necessary to accept materials from the Site. Permit equivalencies shall include local, state and federal requirements for remedial activities in wetlands and floodplain areas, and other action and location-specific requirements described in the Operable Unit II ROD.

g. Site Mitigation and Restoration Plan

The Plan shall discuss the development of a Site Mitigation and Restoration Plan, which shall be submitted as part of the Remedial Design and which shall be implemented during and subsequent to construction of the Selected Remedial Alternative. The discussion should identify technical issues related to restoration or mitigation of wetlands areas which are critical to the successful implementation of the Selected Remedial Alternative, and propose methods for resolving these issues during the design process.

h. Site Maintenance Plan

The Site Maintenance Plan shall be a plan for the routine maintenance of the Site during the Remedial Design phase of the Work. It shall address, but not be limited to, inspection and maintenance of Site security systems.

3. EPA will either approve the Remedial Design Work Plan, or will require modification of such plan, in accordance with the procedures set forth in Section VIII, Paragraph B of this ORDER.

D. REMEDIAL DESIGN

Respondents shall perform the Remedial Design, in conformance with the approved Remedial Design Work Plan.

1. Preliminary Remedial Design Report:

The Preliminary Remedial Design Report shall include a description and analysis of various design options for the excavation of contaminated sediments from the Edmonds Creek Marsh, and the restoration/mitigation of wetlands areas impacted by the excavation or construction activities associated with the Operable Unit I and Operable Unit II Selected Remedial Alternatives. The Preliminary Remedial Design Report should recommend a preferred conceptual design. The design analysis shall provide the rationale for recommending a preferred conceptual design, including supporting calculations and documentation of how such design will meet the requirements of the ROD and Selected Remedial Alternative. The design report must also include the following items (to the extent that Work will be performed regarding the items):

- a. A preliminary Construction Operations Plan which shall address the methods by which construction operations shall proceed. The discussion of methods shall address the timing of and manner in which activities shall be sequenced.

The Plan shall include separate components which address, but shall not be limited to, the following:

- (i) Preparation of the Site including security, utilities, decontamination facilities, construction trailers, equipment storage, and construction of roadways.
 - (ii) The sequencing of construction activities, including well installation and treatment system construction.
 - (iii) Coordination of construction activities.
 - (iv) Site inspections and maintenance during the Remedial Construction phase of the Work.
 - (v) Coordination with local authorities regarding contingency planning and potential traffic obstruction.
- b. Preliminary construction drawings, of standard size, of proposed Work, facilities, equipment, improvements, details and all other construction and installation items as well as drawings representing an accurate identification of existing Site conditions. Typical items to be provided on such

drawings include, but need not be limited to:

- (i) Title sheet bearing at least the title of the project, a key map, the name of the designer, date prepared, sheet index, EPA/NJDEPE Project identification, etc.
 - (ii) All property data including owners of record for all properties within 200 feet of the Site.
 - (iii) The distance and bearing of all property lines which identify and define the project Site.
 - (iv) All easements, rights-of-way and reservations.
 - (v) All buildings, structures, wells, facilities, controls, equipment and features, existing and proposed.
 - (vi) A topographic survey, including existing and proposed contours and spot elevations, based on U.S. Geological Service datum.
 - (vii) All utilities, existing and proposed.
 - (viii) Location and identification of all significant natural features including, but not limited to, wooded areas, water courses, wetlands, flood hazard areas and depressions.
 - (ix) Flood hazard data and delineation, if applicable.
 - (x) North arrow, scale, sheet numbers and the person responsible for preparing each sheet.
 - (xi) Decontamination areas, staging areas, borrow areas and stockpiling areas.
 - (xii) Miscellaneous detail sheets.
 - (xiii) Definitions of all symbols and abbreviations.
 - (xiv) Items not typically required to be included in the preliminary phase of design drawings include: electrical drawings; mechanical drawings; HVAC (heating, ventilation and air conditioning) drawings; structural drawings; and miscellaneous construction details.
- c. an analysis of the impacts to the Edmonds Creek wetlands posed by construction of the Operable Unit I and Operable Unit II Selected Remedial Alternatives,

either as a result of construction or excavation activities or as a result of permanent alteration of the wetlands. This requirement shall incorporate the substantive Work performed under Task 9.0 of the Additional Studies required by Administrative Order No. II-CERCLA-00114, and shall relieve the Respondents of obligation to separately revise that deliverable.

- d. a preliminary report of the results of any additional studies performed in order to supplement existing data concerning the Edmonds Creek wetlands environment, such as soil, vegetation, and wildlife surveys, sediment sampling, or measurement of surface water levels, pursuant to Section C.2.b above.
- e. a Site Restoration/Mitigation Plan, for wetlands areas impacted by implementation of the Operable Unit I and Operable Unit II Selected Remedial Alternatives.

2. Draft Final Remedial Design Report

The Remedial Design Work shall also include the preparation of a Remedial Design Report. The Remedial Design Report shall include the plans and specifications which have been completed, together with a design analysis. The design analysis shall provide the rationale for the plans and specifications, including supporting calculations and documentation of how these plans and specifications will meet the requirements of the ROD and Selected Remedial Alternative. The design report must also include the following items (to the extent that Work will be performed regarding the items):

- a. A Sampling, Analysis and Monitoring Plan for sampling, analysis, testing and monitoring to be performed during the Remedial Construction phase of the Work. The SAMP shall meet the requirements of Paragraph C.2.c., above.
- b. The QAPjP for this SAMP shall also address quality assurance requirements and standards relating to construction operations. Quality assurance items to be addressed include, but need not be limited to:
 - Inspection of the Work
 - Daily logging
 - As-built drawings
 - Testing of the Work to establish whether the design specifications are attained.
- c. A Health and Safety Plan for the Remedial Construction phase of the Work. The HASP for Remedial Construction shall meet the requirements of Paragraph C.2.d., above. Such Plan shall address health and safety measures to be implemented and

observed by construction personnel, as well as recommended health and safety measures for the adjacent community and general public together with a description of the program for informing the community of these recommendations.

- d. A schedule for Remedial Construction and O&M activities. (See Paragraph C.2.e, above.) Such schedule shall provide that construction of the Selected Remedial Alternative under this ORDER shall be initiated on or before January 1, 1994 and completed on or before March 30, 1994. Site restoration/mitigation activities shall be initiated by April 15, 1994 and completed by April 15, 1995.
- e. An Operation and Maintenance Plan for the O&M Phase of the Work. The O&M Plan¹ for Operable Unit II shall include, but need not be limited to, the following elements:
 - (i) A Sampling, Analysis and Monitoring Plan which identifies sampling procedures and locations, analytical parameters, frequency, etc. (See Paragraph C.2.c., above for SAMP requirements.) The SAMP should include provisions for a comprehensive ground water and surface water sampling and analysis program, as described in the Operable Unit II ROD, as well as post-construction effectiveness monitoring of wetlands sediment and biota. The Operable Unit 2 SAMP should be consistent with the provisions of the Operable Unit 1 SAP. Additional monitoring requirements for the contained landfill area are provided by the OU 1 SAP for O&M.
 - (ii) A Health and Safety Plan addressing both routine procedures and emergency response actions. (See Paragraph C.2.d., above, for HASP requirements.)
 - (iii) A description of any equipment utilized in the O&M of the Selected Remedial Alternative.
 - (iv) A description of routine O&M for the components of the selected remedial alternative including a description of tasks for operation, tasks for maintenance,

¹ O&M activities which will occur prior to the completion of the Remedial Construction should not be addressed in the O&M Plan, but in the Site Maintenance Plan or Construction Operations Plan, as applicable. (See Paragraphs C.2.h. and D.2.g. of this Statement of Work.)

prescribed operating conditions, and a schedule showing the frequency of each O&M task.

- (v) A description of potential operating problems and remedies to such problems.
 - (vi) A description of alternative O&M in the event of system failure.
 - (vii) A schedule for equipment replacement.
 - (viii) A description of the routine O&M activities for the Site.
 - (ix) An O&M schedule which identifies the frequency of O&M activities for the Site and when those activities will commence.
- f. The substantive equivalent of completed permit applications for Work to be performed entirely at the Site (including any required supplements) for Federal and State environmental permits which would be required if the remedial action were not conducted under the authority of CERCLA. Examples of when such applications may be needed include:
- Waste water treatment facilities;
 - All points of contaminant emission to the atmosphere;
 - On-site treatment, storage and/or disposal of hazardous wastes;
 - Groundwater lowering or diversion;
 - Groundwater monitoring well installation;
 - Other permits, as applicable.
- g. A Construction Operations Plan which shall address the methods by which construction operations shall proceed. The discussion of methods shall address the timing of and manner in which activities shall be sequenced. The Construction Operations Plan shall also address the coordination of Operable Unit I and Operable Unit II construction activities, as required by the OU II ROD.

The Plan shall include separate components which address, but shall not be limited to, the following:

- (i) Preparation of the Site including security, utilities, decontamination facilities, construction trailers, equipment storage, and construction of roadways.
 - (ii) The sequencing of construction activities.
 - (iii) Coordination of construction activities.
-

- (iv) Site inspections and maintenance during the Remedial Construction phase of the Work.
- (v) post-construction regrading or revegetation of non-wetlands areas of the Site impacted by construction activities, as appropriate.
- (vi) Coordination with local authorities regarding contingency planning and potential traffic obstruction.

Whenever practical, elements of the Construction Operations Plan shall be clearly depicted on the Engineering Plans.

- h. A report of efforts made to secure access and obtain other approvals and of the results of those efforts. (See Paragraph C.2.f, above.) Legal descriptions of property or easements to be acquired shall be provided including, but not limited to, property owners, Site operators, addresses and lot and block numbers, and grantors and grantees of easements.
 - i. Plans for photographic documentation of the Remedial Construction Work. (See Paragraph E.6, below.)
 - j. A Draft Final Site Mitigation and Restoration Plan which shall address wetlands areas of the Site impacted by construction of the Selected Remedial Alternatives for both Operable Units I and II.
3. The Remedial Design Report shall also include: Construction drawings, of standard size, of proposed Work, facilities, equipment, improvements, details and all other construction and installation items as well as drawings representing an accurate identification of existing Site conditions. Typical items to be provided on such drawings shall include those listed in Paragraph D.1.b.
4. The Remedial Design Report shall, as appropriate, include the following:
- a. A discussion of the design criteria and objectives, with emphasis on the capacity and ability to successfully meet design objectives.
 - b. Table of Contents for the specifications, including a listing of specification items from the Construction Specifications Institute master format expected to be included in the construction specifications. This
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master format is presented in the Construction Specifications Institute's "Manual of Practice", 1985 edition, available from the Construction Specifications Institute, 601 Madison Street, Alexandria, Virginia 22314.

- c. Site security measures.
 - d. Site safety and emergency measures.
 - e. Plan view(s) for Site preparation and layout.
 - f. List of drawing sheet titles.
 - g. Construction material recommendations.
5. Respondents shall provide surveying services prior to the final design submission. All survey work shall be appropriately marked, recorded and interpreted for mapping, property easements and design completion.
6. The Remedial Design Preliminary and Draft Final Reports shall be submitted to EPA and the State in accordance with the schedule set forth in this ORDER.
7. EPA will either approve the Draft Final Remedial Design Report or will require modification of it, in accordance with the procedures set forth in Section VIII, Paragraph B of this ORDER. The EPA approved Draft Final Remedial Design Report shall also be referred to as the Final Remedial Design Report.

E. REMEDIAL CONSTRUCTION

1. In accordance with the schedule for Remedial Construction and O&M activities (see Paragraph D.2.d., above), Respondents shall submit the following items to EPA and the State:
- a. Any requests for modification of the approved Final Remedial Design Report based on construction methods identified by the proposed construction contractor(s) or other new information.
 - b. A Site Management Plan for Remedial Construction activities. (See Section C.2.a., above, for SMP requirements.) The SMP for Remedial Construction activities shall identify all off-Site facilities proposed to be used to manage hazardous substances or other materials from the Site resulting from the Remedial Construction and Operation and Maintenance Work. For each facility, the proposed materials and methods of management shall be described.

2. EPA will either approve the Site Management Plan for Remedial Construction and any requests for modification of the Final Remedial Design Report or require modification of them in accordance with the procedures set forth in Section VIII, Paragraph B of this ORDER.

3. On or before November 1, 1993, Respondents shall award the Remedial Construction Contract(s).

4. On or before November 15, 1993, Respondents shall submit to EPA and the State the SMP for Remedial Construction.

5. Respondents shall perform the Remedial Construction Work in accordance with the approved Final Remedial Design Report, the SMP and the approved Remedial Construction schedule.

6. Respondents shall furnish photographs and slides to EPA and the State that record the progress of construction including, but not limited to, the important features of the Site prior to the commencement of the Work, construction activities for the various tasks, and the appearance of the Site after the construction has been completed. Such photographs and slides shall be developed expeditiously and shall be submitted as part of the monthly progress report for the month in which the photographs are developed.

7. Within ten (10) business days of the completion of Remedial Construction for the Selected Remedial Alternative, Respondents shall submit to EPA and the State a Notice of Completion for the Remedial Construction of the Selected Remedial Alternative. The Notice of Completion shall be signed by a State licensed professional engineer and a responsible corporate officer for Respondents and shall certify that the Remedial Construction Work for the Selected Remedial Alternative has been completed in full satisfaction of the requirements of this ORDER. Within thirty (30) days of completion of all construction activities, the Respondents shall submit to EPA a Final Report, which shall summarize the Work performed and which includes the "as-built" engineering drawings depicting all of the facilities and systems constructed under this ORDER. If the Selected Remedial Alternative as implemented differs in any way from the approved plans and specifications of the Final Design Report, such modifications shall be reported and "as built" plans and specifications shall be provided showing all such modifications. The reasons for all such modifications shall be described in detail.

8. Within thirty (30) days of the completion of the wetlands restoration and mitigation activities in the Edmonds Creek Marsh and vicinity, Respondents shall submit to EPA and the

State a Notice of Completion and a Final Site Mitigation and Restoration Report. The Notice of Completion shall be signed by a State licensed professional engineer and a responsible corporate officer for the Respondents, and shall certify that the restoration/mitigation activities have been completed in full satisfaction of the requirements of this ORDER. The Final Report shall summarize the Work performed, and include "as-built" drawings or plans and photographic documentation of the Work performed. If the implementation of the restoration/mitigation requirements differs in any way from the approved plans and specifications of the Final Design Report, such modifications shall be reported and "as built" plans and specifications shall be provided showing all such modifications. The reasons for any modifications shall be described in detail.

F. CERTIFICATION OF COMPLETION OF ALL WORK

1. Within forty-five (45) business days of completion of all Work required by this ORDER, including excavation, construction, and restoration/mitigation activities, Respondents shall submit to EPA and the State a written report prepared and signed by a State licensed Professional Engineer. This report, entitled the Draft Remedial Action Report, shall certify that the Work, with the exception of performance of long-term monitoring programs and other Operations and Maintenance tasks, has been completed in accordance with the standards and specifications set forth in this ORDER, the ROD, the Final Remedial Design Report required by the SOW, the SOW and any additional reports which may relate to this ORDER. The Draft Remedial Action report shall also include, but shall not necessarily be limited to, the following:

- a. Verification that all remedial equipment has been dismantled and removed from the Site;
- b. The results of all verification sampling and analysis to document that the Site has been remediated according to the specifications in the Final Remedial Design Report, the ROD, and this ORDER;
- c. Verification that the Site has been graded and revegetated according to the specifications in this SOW; and
- d. Documentation that all other terms or specifications contained in the Final Design have been conducted satisfactorily in accordance with the ROD and this ORDER.

2. EPA will determine whether the Work or any portion thereof

has been completed in accordance with the standards and specifications set forth in this ORDER, the ROD, the Final Remedial Design Report required by the SOW, the SOW and any additional reports which may relate to this ORDER. If not, EPA shall a) notify Respondents in writing of those tasks which must be performed to complete the Work, or b) require re-submission of the Draft Remedial Action Report in accordance with Section VIII of this ORDER. Respondents shall then implement the specified activities and tasks in accordance with the specifications and schedules established by EPA.

3. After EPA determines that the Work required by this ORDER has been fully completed by Respondents, EPA shall so certify in writing. This certification shall constitute the Certification of Completion of the Work for purposes of this ORDER. EPA's certification shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. §9621(c), or to take or require any action that in the judgement of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§9604, 9606 or 9607.

4. No portion of any Work performed pursuant to this ORDER shall be deemed completed until it has been reviewed by EPA and EPA has certified in writing that it has been completed.

G. OPERATION AND MAINTENANCE

Respondents shall perform O&M activities in accordance with the O&M Plan contained in the approved Final Remedial Design Plan, including the O&M schedule. (See Paragraph D.2.e., above.)

EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made this 25th day of April, 1994 by and among KIN-BUC, INC., a New Jersey corporation with its principal office in care of Transtech Industries, Inc., 200 Centennial Avenue, Piscataway, New Jersey 08854, SCA SERVICES, INC., a Delaware corporation with its principal office at 3003 Butterfield Road, Oak Brook, Illinois 60521 and FILCREST REALTY, INC., a New Jersey corporation with its principal office in care of Transtech Industries, Inc., 200 Centennial Avenue, Piscataway, New Jersey 08854 (hereinafter the "Owner").

WHEREAS, the United States Environmental Protection Agency has issued certain orders to Kin-Buc, Inc., SCA Services, Inc. and others under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), requiring Kin-Buc, Inc., SCA Services, Inc. and the others named in those orders to undertake certain environmental remedial response activities at the Kin-Buc Landfill Superfund Site in Edison, New Jersey (hereinafter the "Site"); and

WHEREAS, the Site consists primarily of all or portions of the land in Lot 3-A, Block 376 and Lots 3-B, 3-C, 4, 5, 6, 7 and 9, Block 400, as shown on the Tax Map of the Township of Edison, Middlesex County, New Jersey; and

WHEREAS, to perform the remedial response activities required under the orders of the United States Environmental Protection Agency, access to land adjacent to the Site is necessary; and

WHEREAS, the Owner owns land adjacent to the Site and is willing to provide access over the same for the purposes and on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Prepared by:

Mark Lynn G. Freund, Esq.
An attorney at law in the State of New Jersey

RECEIVED/RECORDED
MIDDLESEX COUNTY 05/06/94 150719
CONSIDERATION \$1.00 TAX \$1.00
DEED REC. FEE \$31.00
INSTRUMENT DEED 6236
NAME JO

BK4147PR575

BK4147PR575

1. GRANT OF EASEMENT AND ACCESS RIGHTS.

The Owner HEREBY GRANTS to KIN-BUC, INC. and SCA SERVICES, INC. and their respective successors and assigns and their officers, employees, agents, contractors and subcontractors, severally (hereinafter the "Private Permittees") and to the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and the NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY and their respective employees, agents, contractors and subcontractors, severally (hereinafter the "Governmental Permittees") (hereinafter, for the Private Permittees and the Governmental Permittees, collectively, the "Permittees"), an EASEMENT in, on and under and RIGHTS OF ACCESS to and over all those tracts and parcels of land in Lots 4, 5, 6, 7, 9, 26, 31, 37, 43, 44, 45, 46, 47, 49, 56, 59, 60, 61, 63, 67, 68, 69 and 70, Block 400, in the Township of Edison, Middlesex County, New Jersey, as shown on the Tax Map of such municipality (hereinafter the "Property"), FOR ALL PURPOSES related to the performance of remedial response activities at or surrounding the Site which are required to be performed under an Amended Administrative Order of the United States Environmental Protection Agency dated September 21, 1990, Index No. II-CERCLA-00114, recorded in the Office of the Middlesex County Clerk in Deed Book 3882, page 169 et seq., an Administrative Order of the United States Environmental Protection Agency dated November 19, 1992, Index No. II-CERCLA-93-0101, recorded in the Office of the Middlesex County Clerk in Deed Book 4025, page 0678 et seq., and all other orders of the United States Environmental Protection Agency or the New Jersey Department of Environmental Protection and Energy in the matter of the Site which amend, supplement or supersede such orders (hereinafter, for such orders, the "Orders"), UNTIL all such remedial response activities required under the Orders shall have been completed to the satisfaction of the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection and Energy.

Such easement and rights of access shall include, but shall not be limited to the right to enter upon the Property, on foot or

with such vehicles, machinery and equipment which the Permittees reasonably deem necessary or appropriate for the performance of remedial response activities under the Orders, as frequently and at all such times as the Permittees reasonably deem necessary or appropriate for the performance of such activities. It shall also include, but shall not be limited to the right to move freely about the Property and to park such vehicles and store such machinery and equipment on the Property for such periods as the Permittees reasonably deem necessary or appropriate for the performance of such activities.

Further, the Owner HEREBY GRANTS to the Permittees the RIGHT TO USE the Property, during the term of this Easement Agreement, to construct and install all temporary or permanent improvements required to be constructed or installed on the Property under the Orders and to perform all remedial response activities required to be performed on the Property under the Orders, all as Permittees reasonably deem necessary or appropriate for the performance of all remedial response activities required to be performed under the Orders, as frequently and at all such times as the Permittees reasonably deem necessary or appropriate for the performance of all such activities, provided that if the Private Permittees use the Property hereunder, they shall restore the Property to substantially the same condition in which it was at the time of the commencement of such use, except that they shall not be liable to the Owner for damage to the Property caused by the Owner, third parties or acts of God, it being understood, however, that the Governmental Permittees may require certain temporary or permanent improvements to remain in place for a period of years after the completion of remedial response activities required under the Orders, in which case, the right to use the Property for such purpose granted hereunder shall continue during such period, and the continued existence of such improvements shall not constitute a violation of this obligation to restore.

2. INFORMATION ABOUT THE PROPERTY.

The Owner shall provide the Private Permittees with all the information it may have concerning underground utilities, underground storage tanks or other underground obstructions on the Property, including maps or drawings locating the same, within thirty (30) days of the execution of this Easement Agreement.

3. NOTICE TO USERS OF THE PROPERTY.

The Owner shall give all tenants, licensees or other users of the Property notice of the existence of this Easement Agreement and the rights of access and use granted to Permittees hereunder. The Owner shall neither make, nor permit others to make use of the Property in such a manner as may interfere with or hinder the Permittees' access or use of the Property hereunder.

4. NOTICE TO PERMITTEES OF ACTIVITY ON THE PROPERTY.

The Owner shall give the Permittees at least thirty (30) days advance notice of any activity to be undertaken on the Property by the Owner or any tenant, licensee or other user thereof.

5. NOTICE OF DAMAGE.

The Owner shall notify the Permittees of the existence of any damage to any temporary or permanent improvements on the Property or to any of the Permittees' vehicles, machinery or equipment on the Property immediately upon the Owner's discovery thereof.

6. EASEMENT AND RIGHTS OF ACCESS AND USE RUN WITH THE LAND.

The Owner acknowledges that the easement and rights granted hereunder run with the land, and agrees that, in the event of any conveyance by Owner, its successors and assigns, of an interest in or to the Property or any portion thereof, the Owner will convey such interest so as to insure Permittees' continued easement in, on and under, and rights of access to and use of the Property or any such portion hereunder, and that any such conveyance shall restrict the use of the Property or any such portion so that such use will not interfere with or hinder, in any way, the Permittees' continued access to and use of the Property or any such portion hereunder. The Owner shall notify the parties involved in any such conveyance of the existence and the terms and conditions of this

Easement Agreement, and shall give the Permittees notice of a proposed conveyance at least thirty (30) days prior to the closing thereof.

This Easement Agreement shall be recorded in the deed records of the Middlesex County Clerk, and the obligations created hereunder shall be binding upon the Owner and its successors in interest to the Property, whether or not such successors in interest had actual notice of the existence of this Easement Agreement or the Owner failed to give the notices required under this Paragraph.

7. NO LIMITATION OF STATUTORY OR REGULATORY AUTHORITY.

Nothing herein is intended or shall be construed to limit whatever authority the Permittees may have under federal, state or local environmental or other laws or regulations to obtain rights of access and use of the Property in connection with the performance of remedial response activities at the Site.

8. NOTICES.

All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when mailed, by certified mail, and addressed as follows:

If to the Owner: Filcrest Realty, Inc.
 c/o Transtech Industries, Inc.
 200 Centennial Avenue
 Piscataway, New Jersey 08854

If to the Kin-Buc, Inc.
Private Permittees: c/o Transtech Industries, Inc.
 200 Centennial Avenue
 Piscataway, New Jersey 08854

and

SCA Services, Inc.
3003 Butterfield Road
Oak Brook, Illinois 60521
Attention: General Counsel

with a copy to: Facility Coordinator, Kin-Buc
 Landfill Superfund Site
 Waste Management, Inc., Mid-
 Atlantic
 Three Greenwood Square
 P.O. Box 8532
 Bensalem, PA 19020-8532

9. ENTIRE AGREEMENT.

This Easement Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and may not be amended, supplemented or terminated except by a writing signed by both parties. At the expiration of all of the Permittees' rights hereunder, and upon the Owner's request, the Private Permittees shall sign and record an instrument evidencing such expiration.

10. GOVERNING LAW.

This Easement Agreement shall be governed by and construed under the laws of the State of New Jersey unless such laws conflict with federal law applicable to the remediation of the Kin-Buc Landfill, in which case such federal law shall supersede the conflicting New Jersey law.

IN WITNESS WHEREOF, the undersigned have executed this Easement Agreement on and as of the date first written above.

FILCREST REALTY, INC.

By: _____
Robert V. Silva, President

ATTEST:

Andrew J. Mayer, Jr., Secretary

[Corporate Seal]

KIN-BUC, INC.

By: _____
Robert V. Silva, President

ATTEST:

Andrew J. Mayer, Jr., Secretary

[Corporate Seal]

SCA SERVICES, INC.

19

By: Herbert A. Getz
Title: Vice President

ATTEST:

Barbara L. Bier, Asst. Secretary

[Corporate Seal]

STATE OF NEW JERSEY)
COUNTY OF MIDDLESEX)

I CERTIFY that on the date set forth below, personally came before me ANDREW J. MAYER, JR., and this person acknowledged under oath, to my satisfaction, that this person is the Secretary of FILCREST REALTY, INC., the corporation named as the Owner herein; this person is the attesting witness to the signing of this instrument by the proper corporate officer, who is ROBERT V. SILVA, the PRESIDENT of the corporation; this instrument was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution by its board of directors; this person knows the proper seal of the corporation which was affixed hereto; and this person signed this proof to attest to the truth of these facts.

[Signature of attesting witness]

Signed and sworn to before me
on April 5, 1994.

[Notarial Seal]

DONNA M. WOODWARD
A Notary Public of New Jersey
My Commission Expires April 6, 1998

STATE OF NEW JERSEY)
COUNTY OF MIDDLESEX)

I CERTIFY that on the date set forth below, personally came before me ANDREW J. MAYER, JR., and this person acknowledged under oath, to my satisfaction, that this person is the Secretary of KIN-BUC, INC., the corporation named herein; this person is the attesting witness to the signing of this instrument by the proper corporate officer, who is ROBERT V. SILVA, the PRESIDENT of the corporation; this instrument was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution by its board of directors; this person knows the proper seal of the corporation which was affixed hereto; and this person signed this proof to attest to the truth of these facts.

[Signature of attesting witness]

Signed and sworn to before me
on April 5, 1994.

[Notarial Seal] **DONNA M. WOODWARD**
A Notary Public of New Jersey
My Commission Expires April 6, 1998

STATE OF Illinois)
COUNTY OF DuPage)

I CERTIFY that on the date set forth below, personally came before me Barbara L. Bier, and this person acknowledged under oath, to my satisfaction, that this person is the ~~Assistant~~ Secretary of SCA SERVICES, INC., the corporation named herein; this person is the attesting witness to the signing of this instrument by the proper corporate officer, who is Herbert A. Getz, the Vice President of the corporation; this instrument was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution by its board of directors; this person knows the proper seal of the corporation which was affixed hereto; and this person signed this proof to attest to the truth of these facts.

[Signature of attesting witness]

Signed and sworn to before me
on April 25, , 1994.

[Notarial Seal]

EASEMENT AGREEMENT
FROM
FILCREST REALTY, INC.
TO
KIN-BUC, INC. AND SCA SERVICES, INC.

APRIL 25, 1994

RECORD AND RETURN TO:
Marilynn C. Freund, Esq.
Transtech Industries, Inc.
200 Centennial Avenue
P.O. Box 1321
Piscataway, New Jersey 08855-1321
